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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 504

SAMUEL SAIA, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED DECEMBER 30, 1947.

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NEW YORK COURT OF APPEALS

■

PEOPLE OF THE STATE OF NEW YORK

against

SAMUEL SAIA

Defendant-Appellant

[FOUR CASES CONSOLIDATED ON APPEAL]

■

Statement Under Rule 234

These actions were commenced by the filing of four informations on the 1st, 8th, 15th, and 22nd days of September, 1946, respectively, against the above-named defendant-appellant charging the defendant with violation of Ordinance No. 38 of the City of Lockport prohibiting and licensing the use of sound amplifying devices in the City of Lockport.

The defendant pleaded "not guilty" to each information. Trials were had before Honorable Daniel P. Falsioni, Police Judge of the City of Lockport, without a jury.

The People and defendant offered evidence upon the trials, at the conclusion of which defendant filed motions to dismiss, presenting the questions here raised, which were denied and defendant was convicted under all four informations, and found guilty. Under the first two informations defendant was fined $30, in default of payment of which he was ordered committed to Niagara County Jail for 30 days. Under the last two informations defendant was sentenced to serve 30 days in Niagara County Jail on each charge, to run consecutively, and fined $100, in default of payment of which he was ordered committed to Niagara County Jail for 100 days.

Notice of appeal to the County Court of Niagara County was served on the Justice of the Police Court, on the District Attorney, and on the City Solicitor in due time and form, which was duly filed.

Argument of the appeal was duly brought on and had before Honorable Raymond A. Knowles, County Judge of Niagara County.

On March 17, 1947, an opinion affirming the judgments of conviction was rendered by said County Judge and an order was entered affirming said convictions on the 1st day of April, 1947.

On March 28, 1947, application was made to appeal to the Court of Appeals, and on April 21,

1947, leave to appeal to the Court of Appeals was granted by Honorable Albert Conway, Judge of the Court of Appeals.

Upon trials the defendant was represented by Julius Himelfarb, as Attorney of Record, and Hayden C. Covington, as of Counsel. James A. Noonan, City Attorney of the City of Lockport, appeared for the People upon each of the trials before the Police Justice. William E. Miller, Assistant District Attorney for Niagara County, appeared for the People before the County Judge.

Except as herein stated, there has been no change of parties or attorneys.

Certificate, Leave to Appeal

NEW YORK COURT OF APPEALS

PEOPLE OF THE STATE OF NEW YORK
on relation of HARRY J. WOLFE and
FRANCIS J. McLOUGHLIN
against
SAMUEL SAIA, *Defendant-Appellant*

PEOPLE OF THE STATE OF NEW YORK
on relation of PAUL A. MOREHOUSE
and JOSEPH G. CHAUSSE
against
SAMUEL SAIA, *Defendant-Appellant*

PEOPLE OF THE STATE OF NEW YORK
on relation of JOHN E. HULL
against
SAMUEL SAIA, *Defendant-Appellant*

PEOPLE OF THE STATE OF NEW YORK
on relation of GEORGE GARDNER, SR.
against
SAMUEL SAIA, *Defendant-Appellant*

Application having been made in the above entitled four cases to me for a certificate under Subdivision 3 of Section 520 of the Code of Criminal Procedure, and notice of said application having been given to the District Attorney of Niagara County, who waived appearance before me, and counsel for defendant-appellant having appeared before me and having been heard in the matter, I hereby certify that questions of law are involved herein which ought to be reviewed by the Court of Appeals.

Dated Albany, N. Y., April 21, 1947.

ALBERT CONWAY
Judge of the Court of Appeals

Notice of Appeal

STATE OF NEW YORK

COUNTY COURT—NIAGARA COUNTY

PEOPLE OF THE STATE OF NEW YORK
on relation of HARRY J. WOLFE and
FRANCIS J. McLOUGHLIN
against
SAMUEL SAIA, *Defendant-Appellant*

PEOPLE OF THE STATE OF NEW YORK
on relation of PAUL A. MOREHOUSE
and JOSEPH G. CHAUSSE
against
SAMUEL SAIA, *Defendant-Appellant*

PEOPLE OF THE STATE OF NEW YORK
on relation of JOHN E. HULL
against
SAMUEL SAIA, *Defendant-Appellant*

PEOPLE OF THE STATE OF NEW YORK
on relation of GEORGE GARDNER, SR.
against
SAMUEL SAIA, *Defendant-Appellant*

SIRS:

PLEASE TAKE NOTICE, that pursuant to leave to appeal granted by order made by Hon. Albert Conway, Judge of the Court of Appeals of the

State of New York, dated Albany, New York, April 21, 1947, appellant above named hereby appeals to the Court of Appeals of the State of New York from the whole and each and every part of the judgment of conviction rendered against him in each of the above cases in the Police Court of the City of Lockport, Niagara County, New York, and from the whole and every part of the judgment of affirmance and order of the County Court of Niagara County, dated April 1, 1947, and entered in the office of the Clerk of said county on April 1, 1947, affirming the judgment of conviction in each of said cases of the Police Court of the City of Lockport, Niagara County, New York, as aforesaid.

Dated, Brooklyn, New York, April 23, 1947.

JULIUS HIMELFARB
Office and P. O. Address
408 Brisbane Building
Buffalo 3, New York

HAYDEN C. COVINGTON
Office and P. O. Address
117 Adams Street
Brooklyn 1, New York

Attorneys for Appellant

To District Attorney of Niagara County
Lockport, New York

To Clerk, County Court of Niagara County
Lockport, New York

[Proof of service by mail dated April 23, 1947.]

[Filed in the office of Niagara County Clerk, April 25, 1947.]

Application from County Court of Niagara County for Allowance of Appeal to the Court of Appeals Pursuant to Article 520 of Code of Criminal Procedure

STATE OF NEW YORK
COUNTY COURT—NIAGARA COUNTY

(Same Title)

To the Honorable ALBERT CONWAY, Judge of the Court of Appeals:

Now comes Samuel Saia, defendant-appellant in each of the above entitled causes, and makes this his application for allowance of appeal to the New York Court of Appeals, and says that there are common questions of law involved in each case which ought to be reviewed by the Court of Appeals in this matter, and asks that you certify that there are questions of law involved which ought to be reviewed by the Court of Appeals so that further appeal to such court can be taken by said defendant-appellant in each of said causes, and as grounds for this application he would show:

On September 1, 8, 15 and 22, 1946, the City of Lockport, Niagara County, New York, had in effect an ordinance, the constitutionality and validity of which, as construed and applied and upon its face, is here drawn in question. Said ordinance is known as Penal Ordinance No. 38 of the City of Lockport. Sections 2 and 3 read as follows:

"Section 2. Radio devices, etc. It shall be unlawful for any person to maintain and operate in any building, or any premises or on any auto-

mobile, motor truck or other motor vehicle, any radio device, mechanical device, or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of the travelers upon any street or public places or of persons in neighboring premises.

"Section 3. Exception. Public dissemination, through radio, loud speaker of items of news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission from the Chief of Police."

Defendant-appellant was charged by informations filed in the Police Court of the City of Lockport with violations of the aforesaid ordinance on September 1, 8, 15 and 22, 1946. The first two charges were called for trial on September 10, 1946, resulting in convictions on September 11, 1946. The third and fourth charges were called for trial on September 28, 1946. Decision was reserved and on October 4, 1946, Saia was convicted under both charges. All four convictions were duly appealed to the County Court of Niagara County. In due course of procedure the appeals were briefed and argued before the judge of the County Court. On March 17, 1947, the judgment in each of the four cases was affirmed. Although a written decision was filed, no opinion extensively discussing the issues raised upon appeal was filed. The decision merely affirms the judg-

ments of convictions upon the law and the facts. The judge of the Police Court of Lockport wrote two opinions, which apparently were approved by the County Court. The opinions of the Police Court of Lockport in these four cases are attached hereto and marked Exhibits A and B, respectively. (They are a part of the returns on appeal.) The decision of the County Court in these cases is attached hereto and marked Exhibit C.

Appellant is one of Jehovah's witnesses. The facts and circumstances made the basis of his conviction in each of these cases were that he employed a mechanical sound reproducing device while engaged in making a public talk in Lockport, New York, at Outwater Park, on September 1, 8, 15 and 22, 1946, without a permit and contrary to the terms and provisions of said ordinance.

Accompanying this application are

(1) Carbon copy of four returns upon appeal made by Daniel P. Falsioni, Police Justice of the City of Lockport in the above entitled causes. These returns show the Informations, Court Minutes of trials, decisions of Police Justice and certificates of conviction entered in each case.

(2) The stenographic transcript of the testimony taken upon the hearings in the Police Court of Lockport held on September 10 and 28, 1946, which were made the basis of the decision by the County Court in these cases, together with the returns upon appeal above referred to.

(3) Carbon copy of appellant's brief filed in the County Court and reference is hereby made to such brief for a more detailed statement of facts and argument of the law showing that there

are substantial questions of constitutional law that should be reviewed by the Court of Appeals.

These substantial questions of constitutional law which the Court of Appeals will be requested to review are:

(a) Did the People wholly fail to prove a case of a violation of the ordinance by appellant?

(b) Does the ordinance upon its face, and as construed and applied, abridge freedom of speech, freedom of press and freedom to worship ALMIGHTY GOD, contrary to the State and Federal Constitutions?

(c) Does the ordinance prohibit the exercise of freedom of speech, freedom of press and freedom to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution?

(d) Does the ordinance provide for censorship of the right of freedom of speech, freedom of press and freedom to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution?

(e) Does the ordinance unreasonably and arbitrarily prohibit the use of a lawful device which is not *per se* a nuisance, contrary to the due process and equal protection clauses of the State and Federal Constitutions?

(f) Is it within the police power of the City of Lockport by ordinance to prohibit completely the use of sound amplifying devices which are not shown to be inherently dangerous to the safety, health, morals, peace, order, general welfare, or property of the city's inhabitants?

(g) Does the ordinance confer arbitrary and capricious discriminatory powers upon the chief of police of the city of Lockport?

These questions were properly raised in motions duly made at the close of the trials in the Police Court of Lockport and by the brief filed in the County Court. Reference is here made to the argument in support of the above questions appearing in appellant's brief filed with the County Court, which accompanies this application, at pages 20-67.

A copy of this application has been mailed to the Clerk of the County Court of Niagara County for filing. Also a copy has been mailed to opposing counsel.

WHEREFORE, on consideration of the above, appellant says that your Honor, as Judge of the Court of Appeals, should certify that there are questions of law involved which ought to be reviewed by the Court of Appeals so that further appeal as provided by Article 520 of the Code of Criminal Procedure may be had in order that justice may be done.

Respectfully submitted,

JULIUS HIMELFARB
408 Brisbane Building
Buffalo 3, New York

Attorney of Record
for Defendant-Appellant

HAYDEN C. COVINGTON
117 Adams Street
Brooklyn 1, New York
Of Counsel for Defendant-Appellant

Dated: Brooklyn, New York,
March 24, 1947

Docket Entries and Dates of Entry

Niagara County Clerk's Office

Lockport, N. Y.

(Same Title)

September 17, 1946

Order Allowing Appeal to the County Court and Fixing Bail.

Notice of Appeal attached (dated Sept. 13, 1946).

October 4, 1946

Notice of Appeal to County Court (dated Oct. 7, 1946).

Magistrate's Undertaking on Appeal from Special Sessions (sec.'s 753, 754, Crim. Code).

Order of Release (releasing defendant from jail on filing of Undertaking).

April 1, 1947

County Court Judgment Affirming Convictions of Police Court, and Making Police Court Order and Judgment the Order and Judgment of the County Court (four cases).

April 25, 1947

Notice of Appeal to the Court of Appeals (with Leave to Appeal) (four cases).

May 8, 1947

Stipulation (extending time for the filing of the printed case with the Clerk of the Court of Appeals to Aug. 1, 1947).

Return on Appeal

(Same Title)

To the County Clerk of the County of Niagara

Return is herewith made on the charges against the above named defendant and of the proceedings had thereon pursuant to the following annexed viz:

I. Information

II. Court Minutes of Trial

III. Decision of Police Justice

IV. Certificate of Conviction

Dated: October 7, 1946

Daniel P. Falsioni
Police Justice of City
of Lockport

Filed 1946 October 7, P.M. 3:25
Niagara County Clerk's Office
Lockport, New York

Notice of Appeal

COUNTY COURT OF NIAGARA COUNTY

(Same Title)

Sir:

Please take notice that the defendant herein appeals to the County Court from the judgment of convictions herein under the Lockport Penal Ordinance No. 38 Section 2 rendered against him by the Hon. Daniel P. Falsioni, Police Justice of the City of Lockport, New York.

Yours, etc.

Julius Himelfarb

Attorney for Defendant
Office & P. O. Address
408 Brisbane Building
Buffalo, New York

Dated: September 13, 1946.

Affidavit on Appeal

COUNTY COURT OF NIAGARA COUNTY

(Same Title)

STATE OF NEW YORK }
COUNTY OF NIAGARA } ss:
CITY OF LOCKPORT }

SAMUEL SAIA being duly sworn deposes and says that he is the defendant in the above entitled action and that he resides at 208 Vermont Street, Buffalo, New York.

FIRST: That on or about September 1, 1946, the defendant herein was arrested in the City of Lockport for violation of the Lockport Penal Ordinance No. 38 Section 2.

SECOND: That on or about September 8, 1946, the defendant was arrested in the City of Lockport for violation of the same Ordinance above mentioned.

THIRD: That on or about the 11th day of September, 1946, the defendant herein was tried for the aforementioned violations before Hon. Daniel P. Falsioni, Police Justice of the Police Court of Lockport, New York, and both of the above mentioned cases were tried together.

FOURTH: That said defendant was found guilty of the above described charges and sentenced to a fine of $30.00 or 30 days in the penitentiary if said fine was not paid.

FIFTH: That said defendant appeals from said convictions on the ground that said convictions were contrary to law and against the weight of evidence.

SIXTH: That the Penal Ordinance No. 38 Section 2 states as follows:

> Radio devises, and etc. It shall be unlawful for any person to maintain and operate in any building, or on any premises, or on any automobile, motor truck, or other motor vehicle, any radio device, mechanical devise or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting attention of the passing public or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public places or of persons and neighboring premises.

SEVENTH: That the defendant herein is and was at the time of said alleged offenses a duly ordained minister of Jehovah God to preach the gospel of God's Kingdom under Christ Jesus, and that he is and was at the time of said alleged offenses therefore, one of Jehovah witnesses.

EIGHTH: That he was sent forth by the Watchtower Bible and Tract Society which is created, organized and chartered by law to preach the gospel of God's Kingdom.

NINTH: That the defendant herein was operating a loud speaker attached to his automobile at Outwater Park in Lockport, New York, and another member of Jehovah witnesses was in the course of delivering a sermon when the defendant herein was arrested for violation of the aforemen-

tioned Section of the Lockport Penal Ordinance No. 38 Section 2. 49

TENTH: That the defendant was not engaged in any commercial enterprise or for self gain but was in an unselfish enterprise and was engaged in bringing God's words to the people gathered in said park.

ELEVENTH: That the only people who gathered around this loud speaker were Jehovah witnesses and were all interested in hearing the lecture being delivered. That there was no breach of peace, nor was anyone annoyed by this lecture nor was there any complaint filed. 50

TWELFTH: That the aforementioned Section of the Lockport Penal Ordinance No. 38 Section 2 is unconstitutional as it denied the defendant the right to worship the Almighty God according to the dictates of his conscience and his right to freedom of speech, freedom of press and freedoom of assembly, which are all guaranteed by the Constitution of the United States and the Constitution of New York State.

THIRTEENTH: That the aforementioned Ordinance was not properly introduced in evidence. 51

FOURTEENTH: That the facts in the above case did not warrant conviction on said charges. That the people have failed to establish violations of said Ordinance.

FIFTEENTH: That the defendant herein was illegally convicted and sentenced by this Court.

SIXTEENTH: That the information upon which the defendant was tried on each of the charges was illegal, improper and insufficient in law and fact. That the proof introduced in the trial in support of the charges against the defend-

52 ant was illegal, prejudicial, insufficient and against the weight of evidence.

SEVENTEENTH: That the defendant was not properly advised as to his constitutional rights and his rights to be represented by counsel and that the Court failed to give him a fair trial.

EIGHTEENTH: That the prosecution failed
53 to prove beyond reasonable doubt the charges made against the defendant or any other charges or offenses.

NINETEENTH: That no previous application for the relief sought has been made to any Court or Judge.

LASTLY: Deponent prays that this appeal be allowed.
54

SAMUEL SAIA

Sworn to before me this
13th day of September, 1946.

CHAS. S. GAYLORD
Notary Public
In and for Niagara County, New York.
My Commission Expires March 30, 1947.

Information 55

STATE OF NEW YORK }
COUNTY OF NIAGARA } ss:
CITY OF LOCKPORT }

HARRY J. WOLFE and FRANCIS J. McLOUGHLIN being duly sworn, depose and say, that they are Police Officers and that they reside at 172 North Transit Street and 378 Sexton Street, in the City of Lockport, in the County of Niagara and State of New York, that on Sunday the 1st day of September, 1946, within the said City of Lockport, in said County of Niagara and State of New York, one 56

SAMUEL SAIA, 208 Vermont Street, Buffalo, New York, did unlawfully, wrongfully, wilfully, feloniously and against the statute in such case made and provided violate Lockport City Penal Ordinance, No. 38:

PROHIBITING UNNECESSARY AND UNUSUAL NOISES; section 2 of same relative to radio devices etc., in that said defendant did maintain and operate on an automobile a radio device and loud speaker whereby the sound therefrom was cast directly upon the streets and public places in said City of Lockport, N. Y. to wit: OUTWATER PARK. Such radio device was maintained for the purpose of attracting the attention of the passing public and the people in said park and the sounds coming therefrom could be heard to the annoyance or inconvenience of travelers upon the street and the users of said public park and neighboring premises. 57

And that said defendant did violate said ordi-

58 nance in that he failed to obtain a permit or permission from the Chief of Police.

Said defendant thereby committing A VIOLATION OF PENAL ORDINANCE No. 38, SECTION 2.

WHEREFORE, deponent asks that said Samuel Saia be arrested and dealt with according to law.

(signed) HARRY J. WOLFE
(signed) FRANCIS J. McLOUGHLIN
Complainant

59

Subscribed and sworn to before me,
this 1st day of September, 1946.

(signed) DANIEL P. FALSIONI
Police Justice

Information

STATE OF NEW YORK }
COUNTY OF NIAGARA } ss:
CITY OF LOCKPORT }

PAUL A. MOREHOUSE and JOSEPH G.
60 CHAUSSE being duly sworn, depose and say, that they are Police Officers and that they reside at 275 Green Street and 14 Monroe Street, in the City of Lockport, in the County of Niagara and State of New York, that on Sunday the 8th day of September, 1946, within the said City of Lockport, in said County of Niagara and State of New York, one SAMUEL SAIA, 208 Vermont Street, Buffalo, New York, did unlawfully, wrongfully, wilfully, feloniously and against the statute in such case made and provided violate Lockport City Penal Ordinance, No. 38:

PROHIBITING UNNECESSARY AND UNUSUAL NOISES; section 2 of same relative to radio devices, etc., in that said defendant did maintain and operate on an automobile a radio device and loud speaker whereby the sound therefrom was cast directly upon the streets and public places in said City of Lockport, N. Y., to wit: OUTWATER PARK. Such radio device was maintained for the purpose of attracting the attention of the passing public and the people in said park and the sounds coming therefrom could be heard to the annoyance or inconvenience of travelers upon the street and the users of said public park and neighboring premises.

And that said defendant did violate said ordinance in that he failed to obtain a permit or permission from the Chief of Police.

Said defendant thereby committing a VIOLATION OF PENAL ORDINANCE No. 38, SECTION 2.

WHEREFORE, deponent asks that said Samuel Saia be arrested and dealth with according to law.

(signed) PAUL A. MOREHOUSE
(signed) JOSEPH G. CHAUSSE
Complainant

Subscribed and sworn to before me,
this 8th day of September, 1946.

(signed) DANIEL P. FALSIONI
Police Justice

Decision

STATE OF NEW YORK

POLICE COURT—CITY OF LOCKPORT

(Same Title)

Defendant Saia is charged with violating the City of Lockport, New York Penal Ordinance No. 38 on two separate occasions; namely, September 1, 1946, and September 8, 1946.

This ordinance is entitled "Prohibiting unnecessary and unsual noises."

Section 2 of the ordinance reads:

> Section 2 Radio Devices and etc. It shall be unlawful for any person to maintain and operate in any building, or any premises or on any automobile, motor truck or other motor vehicle, any radio device, mechanical device, or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of the travelers upon any street or public places or of persons in neighboring premises.

Section 3 reads:

> Section 3 Exception. Public dissemination, through radio, loud speaker of items of news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission from the Chief of Police.

The only question presented here, to be decided by this Court, is whether or not the City Penal Ordinance is violated by the defendant. The defendant has admitted, under oath, that he operated the loud speaker in a public place on two separate occasions, without first obtaining a permit from the Chief of Police. The City of Lockport does not deny the right of the Jehovah's witnesses to distribute literature on the streets or to assemble in a public place to have a public meeting; nor does the penal ordinance in question prohibit the same. The City of Lockport and this Court takes the position that the United States Supreme Court cases which the defendant has cited are not on point in this case. In our case there is no prohibition of the activities of the Jehovah witnesses in distributing printed matter or preaching the gospel of Jehovah, but there is a prohibition as to the use of a radio loud speaker, in so doing without first obtaining a permit from the Chief of Police. This permit is necessary and it is required for all faiths and denominations and for all activities carried on in a public place or public street in said City where a radio loud speaker is to be used.

The law as to unnecessary and unusual noises prohibited by City of Lockport Penal Ordinance No. 38 is the law and will be the law until changed by future legislature or by decision of a higher court of record.

I find the defendant guilty on both charges and he is fined fifteen dollars on each charge or 30 days in jail.

DANIEL P. FALSIONI
Judge

Certificate of Conviction

STATE OF NEW YORK }
COUNTY OF NIAGARA } ss:
CITY OF LOCKPORT }

POLICE COURT, DANIEL P. FALSIONI, Esq.,
Police Justice of City of Lockport, presiding.

(Same Title)

City of Lockport Penal Ordinance No. 38, Sec. 2.

The above named SAMUEL SAIA having been brought before Daniel P. Falsioni, Police Justice of the City of Lockport, New York, charged with violation of the City of Lockport Penal Ordinance No. 38, Section 2, committed as follows to wit: That at the City of Lockport, Niagara County, New York, on the 1st day of September, 1946, and on the 8th day of September, 1946, the said defendant did unlawfully violate City of Lockport Penal Ordinance No. 38, Section 2, contrary to the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

And having thereupon been duly informed of all the rights and privileges secured to defendants in criminal action by law, as it is in such case made and provided, and having thereupon pleaded not guilty to said charge, and having thereupon being duly tried and upon such trial duly convicted.

It is forthwith adjudged and determined that said d fendant pay a fine of $30.00 and be imprisoned until said fine be paid in Niagara County Jail for 30 days.

Dated at City of Lockport, New York,
this 11th day of September, 1946.

DANIEL P. FALSIONI
Police Justice

I certify that the above is a true copy of the original certificate of conviction.

DANIEL P. FALSIONI
Police Justice

Return on Appeal

(Same Title)

TO THE COUNTY CLERK OF THE COUNTY OF NIAGARA

Return is herewith made on the charges against the above named defendant and of the proceedings had thereon pursuant to the following, viz:

I. Information
II. Court Minutes of Trial
III. Decision of Police Justice
IV. Certificate of Conviction

Dated: October 8, 1946

DANIEL P. FALSIONI
Police Justice
City of Lockport

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Niagara County Clerk's Office
Lockport, New York

6 **Notice of Appeal**

COUNTY COURT OF NIAGARA COUNTY

(Same Title)

SIR:

PLEASE TAKE NOTICE that the defendant herein appeals to the County Court from the judgment of convictions herein under the Lockport City
7 Penal Ordinance No. 38, Subdivision 2 and 3 rendered against him by the Hon. Daniel P. Falsioni, Police Justice of the City of Lockport, New York.

Yours, etc.,

JULIUS HIMMELFARB
Attorney for Defendant
Office & P. O. Address
408 Brisbane Building
8 Buffalo, New York

Dated: October 4, 1946.

Affidavit on Appeal

COUNTY COURT OF NIAGARA COUNTY

(Same Title)

STATE OF NEW YORK }
COUNTY OF NIAGARA } ss:
CITY OF LOCKPORT }

SAMUEL SAIA being duly sworn deposes and says that he is the defendant in the above entitled action and that he resides at 208 Vermont Street, Buffalo, New York.

FIRST: That on or about September 15, 1946, the defendant herein was arrested in the City of Lockport for violation of the Lockport City Penal Ordinance No. 38 Subdivision 2 and 3.

SECOND: That on September 22, 1946, the defendant herein was arrested in the City of Lockport for violation of the Lockport City Penal Ordinance No. 38 Subdivision 2 and 3.

THIRD: That on October 4, 1946, it was stipulated in open court that both of the foregoing violations be tried together.

FOURTH: That on October 4, 1946, the defendant herein was tried for the aforementioned violations before Hon. Daniel P. Falsioni, Police Justice of the Police Court of Lockport, New York.

FIFTH: That said defendant was found guilty of the above described charges and sentenced to a fine of $100.00 and 30 days in the penitentiary and if said fine was not paid an additional day in jail for each dollar not paid.

SIXTH: That said defendant appeals from said convictions on the ground that said convic-

tions were contrary to law and against the weight of evidence.

SEVENTH: That the Lockport City Penal Ordinance No. 38, Subdivision 2 and 3, states as follows:

> 2. Radio devices, and etc. It shall be unlawful for any person to maintain and operate in any building, or on any premises, or on any automobile, motor truck, or other motor vehicle, any radio device, mechanical device or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting attention of the passing public or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public places or of persons and neighboring premises.
>
> 3. Exception. Public dissemination, thru radio loud speakers, of items of news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission obtained from the Chief of Police.

EIGHTH: That the defendant herein is and was at the time of said alleged offenses a duly ordained minister of Jehovah God to preach the gospel of God's Kingdom under Christ Jesus, and that he is and was at the time of said alleged offenses therefore, one of Jehovah witnesses.

NINTH: That he was sent forth by the Watchtower Bible and Tract Society which is created, organized and chartered by law to preach the gospel of God's Kingdom.

TENTH: That the defendant herein was operating a loud speaker attached to his automobile at Outwater Park in Lockport, New York, and another member of Jehovah witnesses was in the course of delivering a sermon when the defendant herein was arrested for violation of the aforementioned Lockport City Penal Ordinance No. 38, Subdivision 2 and 3.

ELEVENTH: That the defendant was not engaged in any commercial enterprise or for self gain but was in an unselfish enterprise and was engaged in bringing God's words to the people gathered in said park.

TWELFTH: That the only people who gathered around this loud speaker were Jehovah witnesses and were all interested in hearing the lecture being delivered. That there was no breach of peace, nor was anyone annoyed by this lecture nor was there any complaint filed.

THIRTEENTH: That the aforementioned Lockport City Penal Ordinance No. 38, Subdivision 2 and 3, is unconstitutional as it denied the defendant the right to worship the Almighty God according to the dictates of his conscience and his right to freedom of speech, freedom of press and freedom of assembly, which are all guaranteed by the Constitution of the United States and the Constitution of New York State.

FOURTEENTH: That the aforementioned Ordinance was not properly introduced in evidence.

FIFTEENTH: That the facts in the above case

did not warrant conviction on said charges. That the people have failed to establish violations of said Ordinance.

SIXTEENTH: That the defendant herein was illegally convicted and sentenced by this Court.

SEVENTEENTH: That the information upon which the defendant was tried on each of the charges was illegal, improper and insufficient in law and fact. That the proof introduced in the trial in support of the charges against the defendant was illegal, prejudicial, insufficient and against the weight of evidence.

EIGHTEENTH: That the defendant was not properly advised as to his constitutional rights and his rights to be represented by counsel and that the Court failed to give him a fair trial.

NINETEENTH: That the prosecution failed to prove beyond reasonable doubt the charges made against the defendant or any other charges or offenses.

TWENTIETH: That no previous application for the relief sought has been made to any Court or Judge.

LASTLY: Deponent prays that this appeal be allowed.

SAMUEL SAIA

Sworn to before me this
4th day of October, 1946.

HARRY L. GILBIE
Notary Public
Niagara County of the
State of New York.
My registration Number
in Niagara County is 469.
My commission expires
March 30, 1947.

Information

STATE OF NEW YORK }
COUNTY OF NIAGARA } ss:
CITY OF LOCKPORT }

JOHN E. HULL, being duly sworn, deposes and says, that he is a police officer and that he resides at No. 120 Juniper Street, in the City of Lockport, in the County of Niagara and State of New York, that on Sunday the 15th day of September, 1946, within the said City of Lockport, in said County of Niagara and State of New York, one SAMUEL SAIA, 208 Vermont Street, Buffalo, New York, did unlawfully, wrongfully, wilfully, feloniously and against the statute in such case made and provided violate Lockport City Penal Ordinance, No. 38:

PROHIBITING UNNECESSARY AND UNUSUAL NOISES; section 2 of same relative to radio devices, etc., in that said defendant did maintain and operate on an automobile a radio device and loud speaker whereby the sound therefrom was cast directly upon the streets and public places in said City of Lockport, N. Y., to wit: OUTWATER PARK. Such radio device was maintained for the purpose of attracting the attention of the passing public and the people in said park and the sounds coming therefrom could be heard to the annoyance or inconvenience of travellers upon the street and the users of said public park and neighboring premises.

And that said defendant did also violate subdivision 3 thereof in that he had no permit therefor.

Said defendant thereby committing A VIOLATION OF PENAL ORDINANCE No. 38, SUBDIVISIONS No. 2 and No. 3.

WHEREFORE, deponent asks that said SAMUEL SAIA be arrested and dealt with according to law.

(signed) JOHN E. HULL
Complainant

Subscribed and sworn to before me,
this 15th day of September, 1946.

(signed) DANIEL P. FALSIONI
Police Justice

Information

STATE OF NEW YORK }
COUNTY OF NIAGARA } ss:
CITY OF LOCKPORT }

George Gardner, Sr., being duly sworn, deposes and says, that he is a Police Officer and that he resides at No. 756 Walnut Street, in the City of Lockport, in the County of Niagara and State of New York, that on Sunday the 22nd day of September, 1946, within the said City of Lockport, in said County of Niagara and State of New York, one Samuel Saia, 208 Vermont Street, Buffalo, N. Y., did unlawfully, wrongfully, wilfully, feloniously and against the statute in such case made and provided violate Lockport City Penal Ordinance number 38:

PROHIBITING UNNECESSARY AND UNUSUAL NOISES; SECTION 2 of same relative to Radio devices, etc., in that said defendant did maintain and operate on an automobile a radio device and loud speaker whereby the sound therefrom was cast directly upon the streets and public places in said City of Lockport, N. Y. to wit: OUTWATER PARK. Such radio device was

maintained for the purpose of attracting the attention of the passing public and the people in said park and the sounds coming therefrom could be heard to the annoyance or inconvenience of travelers upon the street and the users of said public park and neighboring premises.

And that said defendant did also violate subdivision 3 thereof in that he had no permit therefor.

Said defendant thereby committing a VIOLATION OF PENAL ORDINANCE No. 38, SUBDIVISIONS No. and No. 3.

WHEREFORE, deponent asks that said SAMUEL SAIA be arrested and dealt with according to law.

(signed) GEORGE GARDNER, SR.
Complainant

Subscribed and sworn to before me,
this 22nd day of September 1946.

(signed) DANIEL P. FALSIONI
Police Justice

Decision

STATE OF NEW YORK

POLICE COURT—CITY OF LOCKPORT

(Same Title)

FALSIONI, P. J. The cause here presented for my consideration involves the alleged violation on two separate occasions, September 15, 1946, and September 22, 1946, of the City of Lockport Penal Ordinance No. 38, Sections 2 and 3 in Outwater Park, a public park in the City of Lockport.

This Ordinance is entitled "PROHIBITING

UNNECESSARY AND UNUSUAL NOISES." Section 2 of the Ordinance reads:

> Sec. 2. Radio devices, etc. It shall be unlawful for any person to maintain and operate in any building, or on any premises or on any automobile, motor truck or other motor vehicle, any radio device, mechanical device, or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public places or of persons in neighboring premises.

Section 3 reads:

> Sec. 3. Exception. Public dissemination, through radio loud-speakers, of items of news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission obtained from the Chief of Police.

By stipulation of the Attorney for the Defendant and the Attorney for the People both cases were tried together.

The only question presented here, to be decided by this Court, is whether or not the City Penal Ordinance was violated by the defendant and whether or not the Ordinance is constitutional. The defendant has admitted, under oath, that he

operated the loudspeaker in a public place on two separate occasions, without first obtaining a permit from the Chief of Police. The City of Lockport does not deny the right of the Jehovah's witnesses to distribute literature on the streets or to assemble in a public place to have a public meeting; nor does the Penal Ordinance in question prohibit the same.

The City of Lockport and this Court takes the position that the United States Supreme Court cases which the defendant has cited, and *State* v. *Barber,* 289 N. Y. 378, are not on point in this case. In our case there is no prohibition of the activities of the Jehovah witnesses in distributing printed matter or preaching the gospel of Jehovah, but there is a prohibition as to the use of a radio loudspeaker in so doing without first obtaining a permit from the Chief of Police. This permit is necessary, and it is required for all faiths and denominations and for all activities carried on in a public place or public street in said City where a radio loudspeaker is to be used.

After hearing all the testimony in this case I find that the cases of *Cox* vs. *State of New Hampshire,* 312 U. S. 556, and *Hamilton* vs. *City of Montrose,* 109 Col. 228, 124 Pac. 757, are on point with this case.

Justice Jackson, writing the majority opinion for the Supreme Court of Colorado in the above case held: "That the ordinance itself did not set up religious censorship . . . it is aimed solely at the prevention of noises that become nuisances. In the administrations of the ordinance in the present case we see no attempt, overt or hidden, to over ride constitutional guaranties. We believe the people of Montrose have the right to protect

themselves from concentrated and continuous cacophony."

In reaching his decision Justice Jackson took into careful consideration the following United States Supreme Court cases: In *Lovell* v. *Griffin* (303 U. S. 444), In *Hague* v. *Committee for Industrial Organization* (307 U. S. 496), In *Schneider* v. *State* (308 U. S. 147), In *Cantwell* v. *Connecticut* (310 U. S. 305).

Justice Jackson then cited the case of *Cox* v. *State of New Hampshire* (312 U. S. 569), wherein Chief Justice Hughes held that the facts in the above United States Supreme Court cases were inapplicable to *Cox* v. *State of New Hampshire,* in that "defendants relied upon the Fourteenth Amendment to the Constitution of the United States and argued that they had been deprived of their right of freedom of worship, as well as freedom of speech and freedom of assembly. Chief Justice Hughes upheld the validity of a municipal ordinance granting the authority to control the use by the municipality of its public streets for parades or processions, and upheld the judgment of the Supreme Court of New Hampshire, which had affirmed the convictions in the lower court of the defendant for taking part in a parade or procession upon a public street without license having first been obtained."

In the *Hamilton* v. *City of Montrose* case, *supra,* Justice Jaskson stated: "We believe that the facts in *Cox* v. *State of New Hampshire, supra,* more nearly resemble those in the instant case than any of the others above mentioned, and that we would be justified in following the decision in that case. And certainly the principle of ordered liberty with its necessary concomitant measure of control con-

tains an excellent expression in the following words of Mr. Justice Hughes in that case: "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions."

Justice Roberts in his dictum opinion in *Schneider* v. *State*, 308 U. S. 147, states: "Municipal authorities . . . have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated . . . nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such

activity bea[illegible] no necessary relationship to the freedom to speak, write, print or distribute information or opinion."

Justice Pound in 229 N. Y. 248, 253 states: "A park is a pleasure ground set apart for recreation of the public, to promote its health and enjoyment. (*Perris* v. *N. Y. Cent. R.R. Co.*, 36 N. Y. 120, 124) It need not and should not be a mere field or open space, but no objects, however worthy, such as court houses and school houses, which have no connection with park purposes, should be permitted to encroach upon it without legislative authority plainly conferred, even when the dedication to park purposes is made by the public itself and the strict construction of a private grant is not insisted upon. (*Brooklyn Park Commissioners* v. *Armstrong*, 45 N. Y. 234; *Higginson* v. *Treasurer, etc., of Boston*, 212 Mass. 583; *Vil. of Riverside* v. *MaClain*, 210 Ill. 308; *City of Hopkinsville* v. *Jarrett*, 156 Ky. 777)"

The facts in the instant case nearly resemble those of *Cox* v. *State of New Hampshire, supra*, and *Hamilton* v. *City of Montrose, supra*, and I would be justified in following the decisions in these cases. I believe that the City of Lockport Penal Ordinance in question is not unconstitutional. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion.

It is forthwith adjudged and determined that said defendant is guilty on both charges and I therefore sentence defendant to serve thirty days in the Niagara County Jail on each charge to run consecutively and I fine him the sum of $50 on

each charge. If the fine of $100 is not paid the defendant stands committed to the Niagara County Jail one day for every dollar of the $100 fine remaining unpaid.

Dated: October 4, 1946.

DANIEL P. FALSIONI
Police Justice,
City of Lockport

Certificate of Conviction

STATE OF NEW YORK }
COUNTY OF NIAGARA } ss:
CITY OF LOCKPORT }

POLICE COURT, DANIEL P. FALSIONI, Esq., Police Justice of City of Lockport, presiding.

City of Lockport Penal Ordinance No. 38, Sections 2 and 3.

(Same Title)

The above named SAMUEL SAIA having been brought before Daniel P. Falsioni, Police Justice of the City of Lockport, New York, charged with violation of City of Lockport Penal Ordinance No. 38, Sections 2 and 3, committed as follows, to wit: That at the City of Lockport, Niagara County, N.Y., on the 15th day of September, 1946, and on the 22nd day of September, 1946, said defendant did unlawfully violate City of Lockport Penal Ordinance No. 38, Sections 2 and 3 contrary to the form of the statute in such cases

made and provided and, against the peace of the people of the State of New York and their dignity.

And having thereupon been duly informed of all the rights and privileges secured to defendants in criminal action by law, as it is in such case made and provided, and having thereupon pleaded not guilty to said charge, and having thereupon being duly tried, and upon such trial duly convicted.

It is forthwith adjudged and determined that the said defendant is guilty on both charges and I therefore sentence defendant to serve 30 days in the Niagara County Jail in each charge to run consecutively, and I fine him the sum of $50.00 on each charge. If the fine of $100.00 is not paid the defendant stands committed to the Niagara County Jail one day for every dollar of the $100.00 fine remaining unpaid.

Dated at the City of Lockport, New York,
this 4th day of October, 1946.

DANIEL P. FALSIONI
Police Justice

I certify that the above is a true copy of the original certificate of conviction.

DANIEL P. FALSIONI

Transcript of Testimony

[Upon First Trial]

STATE OF NEW YORK
POLICE COURT—CITY OF LOCKPORT

PEOPLE OF THE STATE OF NEW YORK
against
SAMUEL SAIA, *Defendant*

In Police Court, Tuesday, September 10, 1946

PRESENT: DANIEL P. FALSIONI
Police Judge of
the City of Lockport

JAMES A. NOONAN
City Attorney of
the City of Lockport

JUDGE FALSIONI reads the charge against defendant, and asks defendant if he is advised of his rights in this matter, and asks how he pleads.

Defendant: Not guilty.

Mr. Noonan: Are you ready for trial, Mr. Saia?
A Yes, sir.

Judge Falsioni: Defendant will be tried on both charges, that is violating City Ordinance No. 38, Section 2, on two different occasions, September 1 and September 8, 1946. (To defendant) Have you an attorney?

WALTER A. REID appears for Mr. Saia.

Mr. Noonan: Are you an attorney? I want to know whether or not this man is an attorney.

Judge Falsioni: Are you an attorney?

Mr. Reid: No.

Judge Falsioni: What is your address?

Mr. Reid: R.F.D. 4, Lockport, New York.

JAMES PITTARD, being duly sworn, testified as follows:

Direct examination by Mr. Noonan:

Q What is your full name? A James Pittard.

Q What is your address? A 157 John St.

Q What is your business or occupation?

A Special Police Officer at Outwater Park.

Q On September 1st and September 8th were you on duty at the Park? A I was.

Q And during the afternoon of those days did something happen out there? A Yes.

Q Going back to September 1st, did you have some talk with some people about a permit to operate a sound machine or device there at the Park?

A Yes.

Q Tell us what happened, please. A I was up at the horseshoe tournament getting things ready for the boys up there—

Q You were at the horseshoe tournament?

A Yes; and I happened to look down in the Park, and I saw some people walking about and saw the car being placed and noticed the horns, that it was equipped with a loud speaker; I left where I was and went down and asked them if they had a permit to operate the loud speaker, and they said "We don't have to have a permit."

Q Who said that to you? A This gentleman here.

Q What gentleman do you mean? A This gentleman sitting here (indicating Mr. Saia).

Q You refer to the defendant? A Right.

Q He is the one who said that they didn't have a permit? A Yes.

Q How many were there around there? A I would say, that first day, there must have been eighteen or twenty.

Q Eighteen or twenty that day? A Yes.

Q All right, go on. A Then I said, "Who owns the car?"; nobody answered me and I see this gentleman sitting there, and—

Q You are referring to the defendant? A He was in the car, yes.

Q Did you talk to him? A Yes, I asked him if he had a permit to operate that loud speaker and he said "No." He pulled out a piece of brown paper he has in a celluloid case and handed that to me, and I saw that was from Buffalo; by this time the machine was operating; I asked him to shut it off and he said "no" that he couldn't shut it off; we got into a heated argument and I said I would cut the cord and they said, "You go ahead and try it." Then they said "There is no chief of police, no mayor, no law" that could stop them from operating that machine.

Q He told you that? A Yes.

Q Whom did you tell that to, to stop the loud machine? A To all of them.

Q And then what? A I said to them, "My orders are, if you haven't got a permit, to stop all loud speakers, regardless of who they are." They said, "You will never stop this one; it is going to go." I am referring to this gentleman sitting back of you, and he shoved his fist under my nose when he told me I could never stop it.

Q One of the gentlemen shoved his fist under your nose? A Yes.

Q Who was it? A I think, Mr. Mort.

Q What is his name? A Roy Mort, I—

Mr. Reid: You mean this gentleman here, he is Mr. Roy Mort, 10 Morrow Avenue, Lockport.

(Witness continuing): They were all excited, and I was some excited too, and I reached back and got my billy, that is what they gave it to me for, to protect myself with; and I told them again that if they didn't shut it off I would call the police.

Q Was it operating then? A They had talked over it.

Q Where was the automobile, with the sound equipment, with relation to the north side of the Park or the south side of the Park? A It was right there between the trees and the road.

Q You mean by the road, and outside of the trees along the path? A Yes; the car was run about twenty feet in back in the Park, just east of the path that takes you back to the border.

Q That is, the north side? A Yes.

Q What further occurred? A I said "I will call the Police"; they said, "You can call all the Police you want; nobody is going to stop this;" so I walked down to the building and called the Police.

Q You mean down to the main building? A Yes.

Q About how far is that away from them? A Five or six hundred feet.

Q And you did call the Police? A Right.

Q While you were around this equipment were

there sounds coming out of the amplifier? A O, yes.

Q Did you pay particular attention to it? A No, not particularly.

Q You didn't pay attention to what they were saying over it? A No, I didn't.

Q But there words coming out of it? A O, yes, sure.

Q Did some Police officers come out there? A Right.

Q Did officers McLoughlin and Wolfe come out there in their prowl car? A Yes, they did.

Q What did you observe then? A When they got there there was no noise coming out of the horn.

Q What time was that, about? A About 3:50, or maybe 3:40.

Q In your presence did these officers have some talk with the people assembled there? A Yes.

Q What was the substance of the talk? A Everyone tried to talk to them; they asked this gentleman if he had a permit.

Q You refer to the defendant? A Yes.

Q Where was he? A He was still in the car; they asked him if he had a permit and he showed them that brown card he has.

Q The same one he had already shown you? A Yes; and these people also showed us a book too, and read from it that all Police officers that make an arrest or cause an arrest to be made are subject to fifteen to fifty years in jail and fine of five thousand dollars. The officers asked them to keep it quiet and not to run it, and after some argument they went away.

Q The Police officers left? A Yes, they left;

I stayed there; the amplifiers were going; voices were coming out of it; the amplifiers were faced, instead of toward their audience, towards the east and west; and I walked across the road and I said "They have got it turned on and they have defied you," and the Police—

Q Was it turned on? A Yes it was, from shortly after they went.

Q Could you hear it? A Yes.

Q Was it loud? A Yes; you could hear it all right; and the further you were away from it the better you can hear it.

Q And did the officers go back with you? A Yes, they did.

Q And what did the officers say, that you observed? A They asked them to shut it off, asked the defendant.

Q Where was he then? A In the car.

A Did he say anything? A He said he couldn't turn it off.

Q Tell what else happened? A Mr. Wolfe walked around and asked if they were going to turn this thing off; he didn't say anything, so Mr. Wolfe turned it off.

Q How did he turn it off—was there a button that he turned? A Something of the sort.

Q And then what? A Mr. Wolfe went in and gathered up the microphone and pieces and placed it all in the car and left.

Q And the sound truck moved away after that? A Yes, he drove it down.

Q Yes, well, now what occurred last Sunday? A Last Sunday they set up one machine; they had it all hooked up and started to talk over it, and—

Q What time? A Around five minutes after four when I went over to where they were.

Q Did you see the defendant? A Yes, he was in the car.

Q Did they have a group around them then? A They were in their seats having their service; he (pointing to one of the men) was out all the time with the amplifier; I tapped this gentleman on the shoulder and asked him if he had a permit and he showed me the same brown paper.

Q Who did, this defendant? A Yes.

Q Did he say he didn't or did have a permit? A He just showed me the paper, didn't say.

Q And was the sound equipment operating? A Yes, it was.

Q And could you hear it in the Park? A Yes; they were west of the walk last Sunday, I would say thirty feet or so west from where they were the previous Sunday, and I would say two hundred fifty or seventy-five feet down; even better than that perhaps.

Q You could hear it, could you? A O, yes, sure, but not perfect.

Q Outwater Park is a public park operated by the City of Lockport is it? A Right.

Q Do considerable numbers of people gather there on Sundays? A Very large numbers.

Q On these two particular Sundays were there people in the Park there? A Yes, there were some people; of course it is a large Park and they were pretty well scattered around.

Q And they have picnic grounds? A Yes.

Q And play little games, and the children have a wading pool? A That is right.

Q And there is a nice rose garden? A That is right.

Q And shade trees and benches? A Yes.

Q And this second time, this loud speaker was operating, was it? A I didn't even bother to listen.

Q Do you know how long it was going on? A I have never listened to their service.

Q Did the voice refer to any particular individuals? A I presume they have mentioned names, but—

Q Did you hear the word "Jehovah"? A Yes, I did.

Q In the nature of a religious service was it mentioned? A That is right.

Q Then what did you do? A I went right down and called up.

Q Called the Police, you mean? A That is right; I told them the same man was operating a loud speaker up there again and that he had no permit.

Q And did some Police officers come?
A Yes.

Q What officers came? A Mr. Morehouse and Mr. Chausse.

Q What time did they come there, about? A I would say around 4:15 or 4:20, between that and 4:30.

Q And was the loud speaker being operated then? A I was about two hundred feet away from them and when the police car cut in we could hear it then, and they asked me where they were and I said, "Right up there where that car is open."

Q Will you tell what you observed? A They asked him—

Q You mean the defendant? A Yes; they asked him if he had a permit and he didn't have

any, these people came out and talked, talked much quieter than they did the first Sunday; and they arrested him and took him away, and they didn't use the sound truck after he left.

Q Was it shut off when they took him with them? A I believe it was.

Q That is all of what occurred on that last occasion? A That is all.

Q Had this same group, to your knowledge, been out in the Park before? A O, yes.

Q When had they been there before that occasion? A They were there four Sundays with a permit and had their meeting.

Q They had a permit to operate this loud speaker on those four Sundays? A O, yes.

Q Was this same gentleman there? A I believe so.

Q Did they have a permit then? A Yes, the four Sundays, they had a permit.

Q But they didn't have a permit the two times under discussion? A No, they didn't.

Q How many years have you been employed in the Park? A Eight years.

Q The thing you objected to was the loud speaker? A Yes.

Cross-examination by Mr. Reid:

Q You said the City Police came up to the Park about 3:30? A The first day, yes.

Q On September first? A I wouldn't be exact on that time, maybe it was four o'clock.

Q Might have been four o'clock? A They came up there, I would rather say around 3:50.

Q Did the officers, you say they came to the car and then they left the car and drove west; what

do you mean by that? A They drove up the road.

Q How long after that was it that they came back? A Not over ten or twelve minutes; might not be that long; I don't make any special time of that, but they weren't gone too long, just a few minutes; they didn't go too far.

Q What happened, did you say, when they came back? A Well, they were preaching over the loud speaker, whoever was preaching that day, you would know more about that than I would, and these boys were right across from that first turn; and I said "They're still running it, they defy you," and they got out and went over.

Q This defendant, Samuel Saia, is this the card he showed you? A Yes.

Q Did you read this card? A Not all of it.

Judge Falsioni: Is that a permit from the City?

Mr. Reid: This is an identification card, that this man is an ordained minister of the gospel of Jehovah's witnesses.

Mr. Reid to witness:

Q Is this the card? A Yes; I looked down through and couldn't see where it said he had any permit or anything.

Q Did he show you anything else, did he have a book? A I believe you had the book yourself.

Q Did you read any of the book? A I did not.

Q What did I say to you? A I believe you said, "No law can stop us."

Q Was that all I said? A There were so many talking that I don't remember.

Q I didn't mention any Supreme Court rul-

ings? A O, yes, but that could be put in any book.

Q Did I refer to any particular section of this book? A I don't believe you did; this other gentleman read it over to me, part of it, I guess.

Q This was on September 8? A That is right.

Q Now, was this loud speaker going before four o'clock—that is, were they speaking over it before four o'clock? A They were testing it and voices were coming out of it; that could be before four or after four, but they used it after four, I know that.

Q Did you hear any words come over the microphone? A Yes, I heard the word "Jehovah"; I didn't listen to your service; they were all talking to me, you know they were all around me.

Q You couldn't say what time this started, what time the apparatus was put into the defendant's car? A The apparatus was in the car when it came there.

Q I mean the speaker? A That was on top.

Q What about the microphone? A I watched you put the microphone in the Park and I didn't bother you till sound came out of the microphone.

Q Officer Wolfe cut off the equipment? A He turned off the button.

Q Is that all he did? A I believe he went in and got it and put it into the car.

Q Officer Wolfe did that? A I believe so.

Q You say this gentleman was shaking his fist at you? A That is right.

Q What did he say? A He was talking so fast, that God will punish me, that I am a devil and should be in hell, and when his fist came up into my face, then I pulled my billy.

Q What is your billy? A A weapon that policemen carry.

Q What were you going to do with it? A Protect myself, of course.

Q Did you really think he would do anything? A Couldn't tell what might happen when they all got mad.

Q Did he say, "Jehovah God"? A I think he did.

Judge Falsioni: Let us get down to the fact here, please, whether or not there is a permit in this case.

Mr. Noonan: That is all, Mr. Pittard.

FRANCIS J. McLOUGHLIN, being duly sworn, testified as follows:

Direct examination by Mr. Noonan:

Q What is your full name? A Francis J. McLoughlin.

Q You are a police officer? A I am.

Q And how long have you been a police officer in the City of Lockport? A Since January 1st, 1942.

Q On September first, 1946, did you go to Outwater Park in the afternoon? A That is right.

Q It was Sunday? A Yes.

Q And did you see Special Officer Pittard of the Park Department there? A Right.

Q What time of day was that? A About ten minutes to four.

Q And had a request come in to Police Headquarters for some one to go out there? A Yes, the desk sergeant sent us out there.

Q You got there about what time? A About ten minutes to four.

Q And what did you find? A Special Officer Pittard was surrounded by the male members of this group.

Q Do you see some of those men here?
A Yes, these three men in the front row.

Q You are referring to the man who was acting as attorney, and the defendant and Mr. Morte?
A Right.

Q What did you see? A The car there had sound equipment erected on a platform and sound equipment in the car and wires leading from the car to the microphone.

Q How far away was the microphone?
A Perhaps twenty-five or thirty feet away.

Q There were wires running to this microphone? A Right.

Q You saw it? A Right.

Q Then what took place? A I asked them if they had a permit.

Q Whom did you ask? A The group in general; no one seemed to want to answer; then I asked who owned the car, so the defendant said he did; I asked for his registration and operator's license in order to determine the ownership.

Q Was the sound equipment in operation?
A No sounds coming from it; no one was near the microphone. Q Did you say anything more to them? A I asked them if they had a permit and they said they didn't need a permit.

Q Who told you that? A Either the defendant or the attorney here.

Q What other conversation took place?
A Someone started to read from one of their

60 publications; they started to read some decisions—

Q You mean they referred to a little book in which there were decisions of the Court? A Yes, from a book; they read a Supreme Court decision; I told them that our job is to enforce the City Ordinances of the City of Lockport; I explained to them what the City Ordinance was, and told them they would have to have a permit.

Q Did you tell them they would have to have a permit? A Yes.

Q And then did you and Wolfe depart?

61 A Yes, after we warned them not to operate without a permit.

Q Did they say anything? A I heard one of them say "We are not going to back down now."

Q Was this particular defendant in the line of your vision? A He was right in front of me.

Q You and Wolfe departed then? A Right.

Q How many minutes before you went back? A May have been five minutes; we drove over into Price Avenue, and then in about five minutes we went back.

62 Q Did you hear any voice or any noise coming from that direction? A There was sound coming out of the speaker.

Q And did you stop your car? A Yes, we stopped in the south side of Price Avenue, opposite the sound truck.

Q And how far away from the sound truck did you stop? A About thirty-five or forty feet from the sound truck.

Q What was the nature of the sounds coming from there? A Of a religious nature; I heard the name "Jehovah."

Q And then did you go over to where these people were? A Right.

Q What took place then? A The defendant was sitting in the car operating the sound equipment, and he was continuing to operate it after being warned, and I said, "You are now arrested."

Q Was there a wire leading from the sound truck? A It was a regular automobile.

Q What type? A Studebaker.

Q I mean what type, a sedan? A Two-door.

Q Did it have some amplifiers on the top?

A Two amplifiers.

Q Two amplifiers on the top of the car?

A Right.

Q Any other equipment on the outside?

A On the right front side was an amplifier unit.

Q How were these loud speakers facing?

A East and west; that is, up and down Price Avenue.

Q The group was north of the amplifiers?

A Yes, in the Park.

Q And this device was operating? A Right.

Q And voices came out of the amplifiers on the top? A Right.

Q Then what did you do or say? A I opened the door of the car and told the defendant he was now arrested and he would have to go with us, and to bring his car with him and he would have to go with us to the Police Station.

Q And he went to the Police Station with you?

A Right.

Q Did you have the equipment? A Yes; we took the equipment with us; it is very important in making an arrest to be sure of the evidence.

Q Who shut it off? A Officer Wolfe.

66

Q How did he shut it off? A There were two or three buttons on the amplifier unit.

Q And after he turned these, did the sound cease? A That is right.

Q That is all you have to say, is there anything else you can add about it? A That is all.

Cross-examination by Mr. Reid:

Q I would like to ask one question; the amplifier, Officer McLoughlin, who took the amplifier and put it in the car? A I just told the Corporation Counsel that Officer Wolfe did.

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Q You say the speakers were pointed north and east? A No, east and west, the same direction of Price Avenue.

Q And the car was on Price Avenue?
A That is right.

Q And you are sure the speaker was not pointed toward the audience of the speaker?
A I am sure.

HARRY J. WOLFE, being duly sworn, testified as follows:

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Direct examination by Mr. Noonan:

Q You are a Police Officer of the City of Lockport? A Yes.

Q And on September first last did you go to Outwater Park in the afternoon with Officer McLoughlin? A I did.

Q Did you hear Officer McLoughlin testify here just now as to what occurred there? A I did.

Q Have you any corrections or alterations to make to his testimony? A No, I think not.

Q His testimony is correct then? A Yes, he covered almost everything. One point I am pretty sure of: this gentleman, the attorney for the defendant, was doing the talking over the microphone; and when we left the car he continued to talk over the microphone and shouted that the police officers were trying to stop him and that we couldn't stop him, that it was the will of God. I reached into the machine and there was a button, and I pushed the button and shut off the machine; he still stood in front of the microphone, and I reached through the window of the car and took the machine; he said "Be careful, don't break the windows."

Q When you turned the device off, was the defendant sitting in his car? A Practically the only room in the car was behind the steering wheel; all the rest of the machine was filled with equipment.

Q And this gentleman, Mr. Reid, was doing the speaking when you got there? A That is correct.

Q That is all you have to tell about it?

A The gentleman who owned the equipment refused to turn it off, and he acted as if he had to have an order from this gentleman here (indicating Mr. Reid) before he could turn it off.

Cross-examination by Mr. Reid:

Q You are sure that I was the one that was doing the talking on the first day of September? A You were doing the talking when we got out of the police car.

Q Are you sure of that? Q You are the one who said the Police officers had no right to stop you from talking.

72 Q I was saying that? A Right.

Q Sure, now? A Yes.

Q You say that I said you had no right stopping this lecture? A Right.

Q Did I show you anything? A You came over and showed me this book.

Q Is this the book? A Let me see the cover. (Looks at book).

Q Look at it and see. A This is the same size as the other book, and I know it had "Jehovah's Servants" on the cover.

Q "Jehovah's Servants"? And were you re-
73 ferred to any article in here? A Yes.

Q Would you recognize the article if you saw it? A (Witness looks at book.) That looks like the article.

Q That says, "Section 20 of the Federal Code (Title 18, Sections 51 and 52 of U. S. C. A) makes it a felony for anyone, under color of—"

Mr. Noonan: I object to his reading from that book. If he wants to introduce it as his own evidence that will be different.

Judge Falsioni: Objection sustained.

74 Mr. Noonan: You might refer to it by saying that you showed the witness the book and he might admit that that looked like the book, and he calls your attention to page 30 with some reading under the heading "Let such public officials notice." He can introduce this in his case if he wants to but can not do it in the Police record.

By Mr. Reid:

Q There is only one thing: when you came in

the car, the first time, when you arrived there was there sound coming over this speaker? A When we first arrived?

Q Yes. A I don't know, but there was sound—

Q You drove west, you say? A Right.

Q And then you came back to this spot and stopped your car? A On the opposite side.

Q And then you approached the defendant? A We sat there two or three minutes while I called the Police Station; I called the sergeant and told him that you refused to shut off the machine, and asked him if we should bring you down, or just the owner, or the equipment, or everything, and then we shut off our car and made the arrest.

Q And you turned off the speakers because the defendant here would not shut them off? A Right.

Q Did he explain to you why? A He was continually shrugging his shoulders and going like that (witness makes motion).

Q Did he show you any card? A No, he didn't.

Q Didn't show you a card? A No.

Mr. Noonan: That is our case on the first violation.

Judge Falsioni: Do you have any objection to taking testimony in both cases?

Mr. Noonan: That is all right, your Honor.

Second Case (September 8)

JOSEPH G. CHAUSSE, being duly sworn, testified as follows:

78 *Direct examination by Mr. Noonan:*

Q What is your full name, Officer Chausse? A Joseph G. Chausse.

Q You are a Police Officer of the City of Lockport? A Yes, I am.

Q And how long have you been on the Police force? A Since January 1st, 1942.

Q Now, on September 8, in the afternoon, did you go to Outwater Park? A Yes, I did.

Q At about what time? A About 4:15.

Q And with whom? A Officer Moorehouse.

79 Q He is another Police Officer? A Yes.

Q What was the occasion of your going there? A Mr. Pittard called in and informed us the loud speakers were going again at Outwater Park.

Q You refer to Special Officer Pittard? A Yes, sir.

Q You arrived there at about what time? A About 4:20.

Q And whom did you find there? A We found this man.

Q You are referring to the defendant? A Yes, sir.

80 Q Where was he? A He was seated in the car.

Q And what was he doing? A He was operating the loud speaker.

Q What kind of car, can you describe it? A I didn't look at it.

Q It was an automobile? A O, yes.

Q A big car? A Two-door, I believe it was.

Q And where were the loud speakers? A On the roof, the speakers were.

Q How many speakers? A Two.

Q And was there some apparatus on the

right-hand side of the driver's seat? A A wire with microphone attached to it.

Q How far away was the microphone? A I would say about twenty feet away from the car.

Q How many people, approximately, were there in the audience? A Twelve or fifteen.

Q And where were they? A About thirty-five feet away from the car.

Q Was the amplifier operating when you got there? A Yes, it was.

Q Could you hear it as you approached? A Yes, we could.

Q Did you have any difficulty hearing it? A No.

Q What kind of sound was coming from it? A Voices, talking came over the microphone.

Q Do you recognize the man who was talking? A No, I don't.

Q He was talking over the microphone and sound was coming out of the amplifiers? A Yes.

Q What did you do then? A Officer McLoughlin asked the defendant if he had a permit.

Q The defendant was seated in the car? A Right.

Q And did he say no, that he did not have a permit? A He didn't say anything, he just pulled out a book and showed it to us.

Q He showed you a book? A Yes; and I said I didn't care anything about that book; I said, "You were informed last week that you could not operate without a permit;" he stepped out and I said, "Shut it off" and he said, "I can't, my conscience would bother me."

Q Was Mr. Pittard there at the time? A I believe he was.

184 Q And did you shut it off? A Yes, I shut it off.

Q Did the sound cease? A Right.

Q What took place then? A I told him to get into the car with us; this gentleman acting as attorney asked me if he was under arrest, and I said he was.

Q Anything said by the last gentleman you referred to about a permit? A No, sir.

Q Nothing said? A No.

Mr. Noonan: That is all, you may ask.

185 *Cross-examination by Mr. Reid:*

Q What is your name? A Joseph G. Chausse.

Q Officer Chausse, what time did this happen? A In the neighborhood of 4:15 or 4:30.

Q Did you listen to any of the speech over the microphone? A I listened only to see if you were broadcasting.

Q How far were you from the sound car when you heard what was going over the speaker? A I would say twenty-five or thirty feet from the car.

Q Did you hear any other sounds in the Park
186 that day? A Yes.

Q What sounds did you hear? A Another microphone going over at the Stadium.

Q Could you hear it plain? A I couldn't hear it plain but could hear it was a "mike".

Q At that time how were the speakers on the top of the car? A I paid no attention to them.

Q When you got up to this defendant, Samuel Saia, you were presented with a card, were you? A He showed me something but I said I didn't care anything about that card, and you asked me if he was under arrest and I said he was.

Redirect examination by Mr. Noonan:

Q This other loud speaker that was referred to, do you know where that was located? A I didn't know then.

Q (by Mr. Noonan): You learned later that the Lutherans were holding a service within a fence, an enclosed fence, six hundred feet or more away? A Right.

Q And, so far as you know, they had a permit? A Yes, they did have.

Mr. Noonan: That is all.

PAUL MOOREHOUSE, being duly sworn, testified as follows:

Direct examination by Mr. Noonan:

Q You are a Police Officer of the City of Lockport? A Yes, I am.

Q And your name is Paul Moorehouse? A Right.

Q How long have you been a policeman? A Since January 1st, 1942.

Q You heard the testimony of Officer Chausse relative to what occurred on September 8, at Outwater Park, when he arrested the defendant for violation of the City Ordinance relating to the operation of a loud speaker? A Yes, I did.

Q You were with Officer Chausse at that time? A Yes, I was.

Q Is his testimony that you heard him just give, substantially correct? A He described it as nearly correct as possible, I would say.

Q You recognize the defendant here? A Yes, sir.

Q You were with the officer when he asked him

if he had a permit? A Yes, I was; and I also asked him.

Q What did he say? A I asked him if he was the operator of the sound equipment and he said he was; and I asked him if he had a permit but he just didn't answer; and I told him he better shut it off and he said that his conscience would bother him.

Q Could you hear this sound as you approached, for some distance away? A Yes, from fifty to a hundred feet before we approached the sound equipment car we could hear the voices.

Q Do you know whether or not on this particular day the Lutherans, or the Lutheran Church, was holding a meeting? A I believe they were.

Q Where was that being held, inside the Stadium? A Yes, it was.

Q That is surrounded by a high fence? A I would say a six-foot fence.

Q How far is that particular spot from where the defendant was operating the sound thing? A I would say from eight hundred to a thousand feet.

Q And there is an open space between the baseball park and Price Avenue? A Yes.

Q And there is a two lane road on Price Street? A Yes.

Q The street is divided by a parkway in the center? A Yes.

Q And then the park starts again and runs off toward Glenwood Cemetery? A Right.

Q And there is a rose garden and a play ground for children? A Yes.

Q And this is the place where most of the people congregate for picnics and parties, am I right or wrong? A That is right.

Q And there are many trees on the north side of the roadway? A Yes, and much foliage.

Q And the other side is used for base ball? A Yes, the Pony League.

Q And that is all fenced in? A Right.

Q And has grandstands, and stands outside? A Right.

Q That is the grandstands are on the inside of the fenced area? A Right.

Q And people have to be admitted in the regular way? A Yes.

Cross-examination by Mr. Reid:

Q Your name again, please? A Paul Moorehouse.

Q You say you heard this sound car about fifty feet away? A Yes.

Q Did you hear anything that was said over the microphone? A I can't quote anything but I am sure it was of a religious nature.

Q Did you also hear the loud speaker in the Stadium? A I could.

Q And could you hear what was going on there? A No.

JAMES PITTARD, recalled, testified as follows:

Direct examination by Mr. Noonan:

Q Did I ask you before about what took place the second time out there, or did I confine myself to the first action? A Yes, only the first action.

Q All right; then, on Sunday, September 8th, did you send in a complaint to the Police about a

loud speaker that was being set up to be operated in the Park? A Yes.

Q What happened to make you do that? A They had the loud speaker going.

Q Similar to the previous occasion that you have testified to herein? A Right.

Q And was the defendant in the same car and with the same equipment? A Right.

Q Was the microphone set up? A Yes.

Q And the wires connected from the automobile to the microphone? A Yes.

Q What time was it that you observed that situation? A That was ten minutes after four; before the Police got there they had one set up.

Q You went over and said something to them? A To this defendant.

Q What did you say to him? A I asked him for his permit.

Q What did he say? A He just pulled out that card and—

Q He pulled out the card the second time? A And shrugged his shoulders and showed me the card; and I said, "This is not a permit" and I went and called the Police.

Q You told him he couldn't operate without a permit? A Right.

Q And on the 8th, he didn't say anything to you? A Only the one word, that he didn't have the permit.

Q Did he give you no answer at all? A No.

Q And some minutes after that Officer Chausse and Officer McLaughlin came out? A Right.

Q Was the sound equipment machine about in the same place, in about the spot, as the previous time? A No.

Q Where was it then? A They had their

microphone set up nearer to the car the second time.

Q Nearer to the car, you say? A Right.

Q The first time it was twenty feet or so into the Park? A Right.

Q Had the amplifier been operating when you asked them for the permit? A Yes; I waited for it to start before I spoke to them.

Q Did they tell you who they were? A I knew.

Q As a matter of fact they had obtained a permit and had operated for four Sundays prior to that? A Yes, that is right.

Q And they are what is known as Jehovah's witnesses? A Right.

Q And you say this amplifier was, that is, the sounds were of a religious nature that were emanating from the amplifier? A Yes.

Q Could you hear it some distance away?

A Yes, I could hear it a hundred fifty or two hundred feet away, and they weren't screeching at all.

Q How were these amplifiers faced? A East and west.

Q Where was the speaker? A Standing north of the car.

Q North of the car? A Yes.

Q They didn't turn it off? A No.

Q And you didn't turn it off? A No.

Q And then the two officers came? A Right.

Q Did it run all of the time? A I could hear it running, and when I went over to the building I had to walk five or six hundred feet, and I could hear it.

Q That building is in what direction?

A Southeast.

Q Was the machine in operation when the Police Officers came? A Yes.

Q You heard the testimony of Officers Chausse and Moorehouse? A Yes.

Q Was that about as you observed it, what they told is the truth? A That is right.

Q I want to get back to this fact: that previously this group had a permit to operate in the Park, and they had operated there for four Sundays? A I was told it was three Sundays, and I got down here and found it was four.

Q They had a written permit to operate? A Yes.

Mr. Noonan: That is all.

Cross-examination by Mr. Reid:

Q You said that you could hear the sound car a hundred fifty or two hundred feet? A Hundred and fifty or so.

Q You are sure about that? A That is right.

Q And you said that when you left the sound car you went and telephoned for the officers? A Right.

Q How far is that office where you went to phone? A Five or six hundred feet at most.

Q Where is this office located? A Inside of the garage, a building they have for the park's tools and so on.

Q It is right at the Stadium? A Closer to the Stadium than to where the sound car was.

Mr. Noonan: We rest.

Mr. Reid: I would like to present a motion. I will read it to the Court. (Reads the following:)

STATE OF NEW YORK

COUNTY OF NIAGARA—POLICE COURT

JAMES PITTARD AND CITY OF LOCKPORT, N. Y.

versus

SAMUEL SAIA, *Defendant*

MOTION TO DISMISS

Now comes the defendant and moves to dismiss this case and for discharge upon the following grounds:

(1) The complaint is invalid and does not state facts sufficient to constitute an offense under the law.

(2) The law in question is invalid and void on its face because it abridges the right of freedom of speech, press and worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution, as well as the similar provisions in the Constitution of this State.

(3) The law in question, as construed and applied to the particular facts and circumstances shown in the evidence in this case, is invalid and void, because it abridges the right of freedom of speech, press and worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution, as well as the similar provisions in the Constitution of this State.

(4) The prosecution has wholly failed to make out a case against the defendant and the evidence shows that the defendant is not guilty of the offense charged.

WHEREFORE the defendant prays that this court dismiss this case and that the defendant be discharged.

(signed) SAMUEL SAIA
Defendant

Judge Falsioni: Motion denied; you may have an exception.

Mr. Noonan: I suppose he means to dismiss all cases?

Mr. Reid: Yes, thank you. I present this for the record.

Mr. Noonan: Plaintiff rests.

SAMUEL SAIA, being duly sworn, testified as follows:

Direct examination by Mr. Reid:

Q Will you give your name and address, please? A Samuel Saia.

Q And your address? A 208 Vermont Street, Buffalo, New York.

Q Will you tell the Court, Mr. Saia, what happened on the first day of September, this month?

A I was down at the Park and I drove along side of the road—don't know the name of it—

Q You mean Outwater Park? A That is right; right in the Park.

Q That is in Price Avenue? A Yes, that is it, Price Avenue I think.

Q You were in Price Avenue in your car? A Yes, and to operate the sound car.

Q Why did you go to operate the sound car? A The purpose is to magnify the name of Almighty God and the great Jehovah in a Bible discourse of the Jehovah witnesses.

Mr. Noonan: I object to this line of testimony; it is incompetent, irrelevant and entirely immaterial; he said he went there to operate the sound truck.

Judge Falsioni: There is no question here as to a Bible discourse; the question here is whether or not a permit was obtained to use this loud speaker, and I want you to ask questions to that effect.

Mr. Reid: What we are trying to do is to try to prove why the defendant was in this car.

Judge Falsioni: This case deals only with the question of a permit, and nothing else.

Mr. Reid to witness:

Q Will you continue your testimony? A As I was at the Park, I had the equipment up and the speaker on, and it takes quite a time to arrange to have the speaker on; and as I was doing that, getting the speaker ready, I seen, I don't know the name, a cop at the Park—

Q Was he here today? Was it James Pittard? A I don't know, but he—

Mr. Noonan: Stand up, Mr. Pittard. (Mr. Pittard stands up).

Mr. Reid:

Q Is that the man? A Yes; I seen him and he talked to one of the friends and discussed the permit; I was to have the car ready, so one of them presented a card similar to this while I was working around.

Q Whom did you present this card to, Pittard?

A Someone presented this card to Pittard; that is what I seen.

Mr. Noonan: What kind of card is it?

Judge Falsioni: To show that he is an ordained minister of the Jehovah God.

By Mr. Reid:

Q You presented these credentials that you are an ordained minister of Jehovah God, and did he remove it? A Wait a minute; as I was busy with the operating system, getting it ready, Mr. Pittard, I heard him say, talking to one of the friends—

Q You mean to one of your friends. A Yes, one of my friends; he said "If you don't put this out, I am going to cut the wire," so one of the friends he was talking to said, "Don't you do it," and pointed his finger and said "Don't you do that because you will be responsible to God," and then he said, "Don't damage my property." He said "I am going to do it," and he said, "If you do it you are damaging my property." And then he called the Police. I was arranging the amplifier and then I sat in the car. When the Police came they told me if I had a permit to show it; the friends had to talk for me because I am broken in knowledge. They come to me and I present this card and this here book to show them the rights we have from the Constitution; we don't want to hurt—

Q You presented this card, did you? A Yes.

(Mr. Reid offers the card in evidence; received and marked "Exhibit A".)

Q And then what occurred? A I told him

to read and see what rights we got under the Constitution, and he say, "We don't care about the Constitution"; and then he swear, and said, "I don't care a damn about the Constitution."

Judge Falsioni: Who said that?

A Some of the officers, I don't recall; but you can tell if that one said "I don't care about the Constitution; we have got to have the City Ordinance."

Judge Falsioni: Do you know who it was?

A I don't recognize them; I hear that while I was busy with the sound car; so it was told that I was the owner, and they came to me and I present the booklet and show them it says, "Section 20 of the Federal Code—"

Mr. Reid: You showed them page 30, paragraphs one, two, three and four? A Yes.

Mr. Reid: Under Section 51 and 52 of U.S.C.A.? A Yes.

Q And this is the book? A Yes.

Q And on the outside there was the question of shutting off the car? A Yes, and someone, I don't recall who because I was on the steering wheel side of the seat, someone—

Q Which seat? A The steering-wheel seat; someone starts throwing stuff into the car; microphone and wire.

Judge Falsioni: Know who that was? A I don't know because I was on the other side of the car.

Judge Falsioni: You don't know whether or not it was a Police officer? A Yes, it must have been.

20 Judge Falsioni: No such thing as "must have been"; do you know who it was? A One friend hollered, "Don't break the window"; and then I seen the Police officer throw the microphone in the car.

Mr. Reid: Are you sure it was a Police officer? A I seen the badge; the microphone cracked a little by the window; then he placed me under arrest and they said, "Get in the car and follow us."

Q Who was going to lecture over the microphone before it was shut off by the Police?
21 A No one because I was just fixing it, getting it ready.

Q Before you were arrested who was talking? A Mr. Mort, this gentleman right here, was the one who was going to talk.

Q This was the first lecture? A The first lecture, no, the first lecture was a young man I don't see him in the audience.

Judge Falsioni: This was on September first? A I don't see him in the audience.

Mr. Reid: You just said it was this man here. A I don't recall.

22 Judge Falsioni: You are not sure it was? A On September first I am not sure.

Mr. Noonan: He could say that some member of Jehovah's witnesses was going to lecture.

Judge Falsioni: It was some member of your friends? A Yes, one of my friends, he was going to lecture.

Mr. Reid: And then they arrested you? A Yes, they took me to the Police Station and

they put me under arrest; they asked me a question how I was using the sound car and if I had a permit; and I told them that this is not a commercial enterprise but is a lecture to proclaim to the people that Jehovah God—

Mr. Noonan: Object to that again as incompetent, irrelevant and immaterial; the question here is: was it operated or not, and did they have a permit or did they not.

Judge Falsioni: Objection sustained.

Mr. Reid: You say, when you went to the Police Station you told them what you were doing up there at the Park? A Yes.

Q Did you present this card? A Yes.

Q And you showed them the book? A Yes.

Q And you assured them you are an ordained minister? A Yes, and they said "You have got to have a City Ordinance;"

Q And they told you you must have a permit in order to operate the sound car? A Yes.

Q Did you tell them anything else? A In the Park I showed them the same thing and told them the Constitution gave us the right and they said "We don't recognize the Constitution, only that you have to have a permit from the City of Lockport."

Cross-examination by Mr. Noonan:

Mr. Noonan: The sound truck was being used, wasn't it, sound was coming out of it at the Park? A When?

Mr. Noonan: On the first occasion, September first. A The first occasion, that was afterwards; the seats was beyond, twenty-five or thirty feet away, and Mr. Pittard told us that that was

26 private ground, and that we couldn't use the Park because it was private; and the friends carried the benches towards the road, near the sound car.

Mr. Noonan: The amplifier was being used when the Police officer was there? A Maybe, while the Police officer was there, but not before,

Mr. Noonan: And you had no permit? A That is right.

Redirect examination by Mr. Reid:

Mr. Reid: You say the sound car was not being used when Mr. Pittard called up the Police of
27 Lockport? A I recall that when he was there I was fixing the system, and till I heard an argument going on, a discussion about a permit, it was not used; I recall that sure.

Mr. Noonan: No further questions.

ROY E. MORT, being duly sworn, testified as follows:

Direct examination by Mr. Reid:

Q What is your full name and address?
28 A Roy E. Mort, 10 Morrow Avenue, Lockport, New York.

Q And what is your occupation? A Full-time minister of the Gospel of the Kingdom, an ordained minister.

Mr. Noonan: What denomination? A We go by the Scriptures, as Isaiah 12:23, the church of the first born, whose names are written in Heaven.

Q It is what we know as Jehovah's witnesses? A Known by the Watchtower

Bible and Tract Society, created to go forth under their direction and having authority to preach the gospel.

Q (By Mr. Reid): What do you mean that you have authority to go forth under their direction?

Mr. Noonan: Object, object It is incompetent, immaterial and irrelevant, and has no reference to this Court whatsoever.

Judge Falsioni: Objection sustained. The only question here is whether or not a permit was obtained to operate this sound device.

Mr. Reid: Your Honor, it is necessary that we find out why this man was there and had anything to do with this group that he was under the direction of the Watch Tower Society.

Mr. Noonan: I have no objection to granting a stipulation that he went there as an ordained minister of your group; but I do object to their saying that Jehovah's witnesses gave them any to guide them into this practice.

Mr. Reid: You were the speaker there? A Yes.

Q What brought you to the Park to use this sound apparatus? A What brought me there? Q Yes, what brought you there that day? A Why, we have a commission from the Lord to—

Mr. Noonan: Incompetent, irrelevant and immaterial about his commission and I object to it.

Judge Falsioni: Objection sustained.

Mr. Reid: Did you use the sound apparatus? A Yes, sir, I did until I was shut off.

Q How long did you use it? A Used it approximately from three to five minutes.

Q Can you point out the officer that shut it off?

Mr. Noonan: Stand up, Officers, Mr. McLoughlin and Mr. Wolfe; raise your hand, Mr. McLoughlin; raise your hand, Wolfe. (Officers rise and raise their hands, as directed.)

Mr. Reid: Who shut it off, do you know? A I think it was Wolfe.

Q And did that interfere with your Bible lecture? A Yes, sir.

Q Did you continue to give the Bible lecture? A Yes, I continued to give the Bible lecture, as advertised.

Q Was there any other interference after Wolfe shut the apparatus off, that is, did you hear anything that was said? A Some man made the statement that he "didn't give a damn for the Supreme Court's rulings."

Q Do you know which one said that? A I am sure it was Wolfe.

Q Which one? A This last one.

Q You are sure he shut it off? A Yes.

Q Then what did he do? A He took the amplifier and threw it into the car.

Q Did he say he didn't give a damn for the Supreme Court ruling before or after? A Before.

Q You continued to give the Bible lecture? A Yes, I did.

Q Did they leave then? A Mr. Saia, I understand, drove the car to the Police station.

Q Was he rough in handling this sound equipment, when he threw it into the car? A Yes.

Q He was rough? A Yes, he was.

Mr. Noonan: Object to that; let him show what was done to it.

Judge Falsioni: The question still is as to whether or not a permit was obtained.

Mr. Reid: The previous witness had stated that one of the windows of his car had been broken, was that so? A Yes, it was.

Q Now, then, can you tell us anything else that happened, Mr. Mort? A For instance, I went to Mr. Newell before this lecture to obtain a permit, and Mr. Hammond was with me, and we talked with him and he said he had had a complaint, and I said I would like to know who complained and he said he wouldn't tell me, we wanted to know who made the complaint, for it is proper and right to get that; but when he didn't tell us and wouldn't give us the permit we went to the Park and asked them for it, for a permit, and they couldn't give it to us; the lecture was already arranged and we proceeded to have the lecture on September first.

Mr. Noonan: Didn't you know you were breaking a City Ordinance? A We don't break an ordinance; when the ordinance is contrary to the law of God it is not an ordinance.

Mr. Noonan: I ask that that be stricken out.

238 Judge Falsioni: That must be stricken out.

Mr. Reid: He has proven to the Court that he is an ordained minister, and as such he has a right—

Mr. Noonan: The use of the loud speaker without a permit is the gist of this case, and that is the only question here.

Mr. Reid: Whether or not it is against the law, that is on the prosecution side, for they have shown that they did not conduct themselves in a gentlemanly manner.

239 Judge Falsioni: A Police officer can conduct himself however he may have to to enforce the law.

Cross-examination by Mr. Noonan:

Mr. Noonan: How long have you lived in Lockport? A Three years.

Q Where were you born? A Waterford, Ohio.

Q How long have you been connected with Jehovah's witnesses? A Since 1919, the First World War.

240 Q Do you have any regular church or tabernacle? A Yes.

Q Where is it? A 98 Main Street.

Q Who is in charge of Jehovah's witnesses in Lockport? A We are all under the commandments of the Lord.

Q There is no one recognized as the head? A Mr. Walter Hammond is the overseer, to see that things is carried out and orderly here.

Q You knew when you went out there to Outwater Park that you didn't have any permit? A Yes, sir.

Q You had been operating there four times or so? A We operated with a permit.

Q You had a permit this year to operate out there? A I believe we did.

Q Did you have the loud speaker then? A Yes.

Q Those four times you had the loud speaker? A Yes.

Judge Falsioni: Did you have any interference at that time from the Police? A I believe not; Mr. Newell said there was a complaint but it was not verified.

Q You had no permit on the first of September? A That is right.

Q That other permit had run out? A Yes, it had.

WILLARD H. WENDT, being duly sworn, testified as follows:

Direct examination by Mr. Reid:

Q What is your full name? A Willard H. Wendt.

Q And your residence? A 196 Elmwood Avenue.

Q Lockport, New York? A Yes, Lockport.

Q Will you tell the Court your occupation? A Ordained minister of Jehovah God.

Judge Falsioni: For the information of the Court, how do you become an ordained minister? A We study at our hall, listen to our different lectures, and read, and by that means we get our knowledge and become ordained ministers; we are always learning, always studying.

Q What is your authority? A We are the servants of Jehovah and—

Judge Falsioni: Never mind about the authority.

By Mr. Reid: What caused you to be at the Park that day? A We have Bible lectures and these are in the name of Jehovah God; we are responsible to Jehovah God for the things we do as witnesses; we went out to this Park to give a witness to the people, that Almighty God might be glorified.

Mr. Noonan: I object to his giving any lecture here.

Judge Falsioni: That last part may be stricken out.

Mr. Reid: Will you tell the Court what happened on September first? A We have public lectures that are advertised extensively on Saturday, and on September first we were out there to give this lecture and we had sound equipment in order to spread—

Q You mean a sound car? A That is right.

Q What was the purpose of the sound car? A This sound equipment was to amplify the voices so people could hear the lecture.

Q You mean so people could hear the speakers' voices? A That is right.

Q What time was this? A We were supposed to start at four o'clock sharp.

Q And you did start at four? A We had some trouble out there; before we were going to start Mr. Pittard, I think that is his name, the

policeman at the Park, before we ever started our sound equipment at all he came over and said we couldn't use this equipment and he didn't even know what we were going to do with it.

Q What time was that? A Maybe twenty minutes before four o'clock.

Q Did he cause a scene? A That is right; he interfered with our work.

Q What work did he interfere with? A I mean, preaching the gospel of Jehovah's kingdom.

Q Did he stop you? A He said he would cut our wire.

Q The wire of the loud speaker, that is? A The wire of the microphone.

Q Did he make any attempt to cut the wire? A No, he didn't.

Q But he said he would cut it, did he? A That is right, if we started the equipment.

Q Then what happened? A We tested the equipment to see whether it was working all right or not, and then it was shut off; at four o'clock we turned on the loud speakers.

Q Who was the speaker then? A On September first it was Mr. Roy Mort.

Q Sure it wasn't me? A No, it wasn't you.

Q Then what happened? A Mr. Wolfe came and—

Q Officer Wolfe, you mean? A That is right.

Q And who was with him? A I can't tell you the other, but—

Q Was it Officer McLoughlin? A I believe so.

Q Then what happened? A They came out there, I believe Mr. Pittard called them on the phone.

Q And they arrived on the scene? A That is right.

50 Q At about what time did they arrive? A What time?

Q Yes, about what time was that? A Shortly after four o'clock, but I wouldn't say the exact time.

Q What did they so? A They told us to shut this off; Mr. Saia showed them that he was an ordained minister of Jehovah God and showed his credentials, and I believe it was you who showed him a booklet showing the rulings of the United States Supreme Court.

Q Was it this booklet? (Shows witness book-
51 let) A I think it was page thirty of this book; and these are the paragraphs one to four, Let Public Officials Notice; Section 20 of the Federal Code, Title 18, Sections 51 and 52 of the U. S. C. A. makes it a felony for anyone to deprive any citizens of their constitutional rights or—

Mr. Noonan: I object to that. The book speaks for itself.

Mr. Reid: Are you sure that is the book? A Yes, sir.

Q And did you see him use this? A Yes,
52 sir, to show that we are ordained ministers of Jehovah God.

(Book offered in evidence; received and marked "Exhibit B")

Q What did the officers say to Mr. Saia? A After we showed him this here book and give him an explanation of these clauses of the Constitution of the United States, he swore and said he didn't care a damn—

Mr. Noonan: Who said that? A Officer Wolfe.

Mr. Noonan: Just what did he say? A "I don't give a damn for the Constitution of the United States; we have a City Ordinance that must be obeyed."

Q Are you sure it was Wolfe? Yes, sir.

Q (to Officer Wolfe) Mr. Wolfe, will you stand up? (Mr. Wolfe stands up.)

Q Is he the man who said that? A That is right.

By Mr. Reid:

Q Then what did Mr. Wolfe do, anything? A He took our microphone and threw it into the car, and some of the equipment.

Q What do you mean by "some of the equipment"? A Some wires we had to carry this through, the wires to the speakers.

Q How far was the microphone from the car? A At that time I would say twenty or twenty-five feet.

Q Behind the car or in front of it? A On the north side of the car.

Q Officer Wolfe took the equipment and threw it into the car? A Right.

Q Did you observe anything else? A From then on they said that he was arrested and they brought him down here to Police Headquarters.

Q Is that all you know about the case? A That is all.

Mr. Noonan: No questions.

Judge Falsioni: Where are you from, Lockport, New York? A Yes, sir.

Q Were you born in Lockport? A Right.

Cross-examination by Mr. Noonan:

Mr. Noonan: How old are you? A Thirty-five.

Q Besides being an ordained minister of Jehovah's witnesses, do you have any other occupation? A That is all.

COURT ADJOURNED to 1:15 p.m.

AFTER RECESS the following testimony was taken:

WALTER HAMMOND, being duly sworn, testified as follows:

Direct examination by Mr. Reid:

Q Now, would you tell the Court your name and address? A Walter Hammond, 513 Walnut Street.

Q And will you tell the Court your occupation? A Laborer, at Harrison Radiator.

Q Now, would you tell the Court what took place at Outwater Park on the first day of September? A Yes, sir; we were in Outwater Park on September first, conducting a Bible lecture; we had previously been in the Park conducting lectures without a permit, previous to the City Ordinance.

Mr. Noonan: I object, unless he fixes the date.

Q When were you conducting lectures there with a permit? A Previously, last Fall, we were in the Park conducting Bible lectures before the City Ordinance went into effect.

Q Will you tell the Court why you were in the Park on September first? A On September first we were in Outwater Park conducting Bible lectures; we get our authority from Isaiah 61 and 62.

Mr. Noonan: I move to strike that out.

Judge Falsioni: Yes, that last may be stricken out. You must confine yourself to the question at issue, that is whether or not you had a permit on September 1st.

Mr. Reid: Could you tell the Court, then, what you know about the arrest of the defendant, Mr. Saia? A When Mr. Saia was arranging his sound equipment in his car, to give the sound effects to this Bible lecture, Mr. Pittard, I believe, he is a special officer in the Park, came up, his face very much red and very much unlike a gentleman.

Mr. Noonan: I object to that and move that it be stricken out.

Judge Falsioni: That last characterization may be stricken out.

Witness (continuing): He demanded of Brother Saia if he had a permit; the sound car was not yet in operation; Brother Saia presented his credentials, showing that he was and is an ordained minister and showing his authority from the Watch Tower Bible & Tract Society, showing his ordination and commission as set forth at Isaiah 61:1 and 2; and Isaiah 43; and I heard Mr. Pittard ask him what his authority was, and Mr. Saia kept on arranging his equipment, and he said, "If you put that thing in motion I will cut the wires." Mr. Saia continued to do his work, to put his equipment in

62 action, and this Police officer left the Park, presumably to call other officers.

Q What time was that? A Approximately four o'clock, just previous to the sound equipment going into effect; shortly after four o'clock, when it had been in operation two or three minutes, I heard him say, "That is enough; you fellows shut that thing off." Brother Saia made no motion to shut it off, and the officer, I believe his name is Wolfe, reached in and shut the apparatus off and put the speaker into the car.

Q Do you see Mr. Wolfe here? A Yes; the
63 second gentleman there (indicating).

Q Now then, what happened then, after you saw Mr. Wolfe take the speaker and put it into the car? A They placed Brother Saia under arrest, and you asked the policeman if he was under arrest, and they said he was and they asked Brother Saia to drive up to the station.

Q Now, when Mr. Saia produced his identification, or his credentials, as you call them, what did the officer do? A He wouldn't look at them, and said "That is just some of your printed stuff,
64 that does not concern me, and I don't give a damn about that either," and then—

Q Didn't give a damn about what? A About the Constitution.

Mr. Noonan: Let him tell the words Wolfe used.

Judge Falsioni: What were his exact words? A They tried to read to him what it said about the Constitution, and he said he didn't give a damn that he was interested only in the City Ordinance.

Mr. Reid: And at that time Saia was showing him his credentials, which was this book?
A That is right.

Q Did you see this book before? A You had it in your hand and called the Police officer's attention to it.

Q To any particular part? A Yes, you showed him the article on page 30.

Q Sure of that? A I am sure.

Q Was there any further argument between the defendant and the Police? A No, no more argument; Roy Mort stepped up and said, "You have no right to shut this off;" and Mr. Pittard said, "Look out there, young fellow, or I will kill you with this thing."

> Mr. Noonan: State the exact words of Pittard. A He was making a gesture with his finger and he said "You have no right to shut this off," and Pittard said, "Look out, young fellow, or I will lay you low with this thing I have in my hand."
>
> Mr. Noonan: Did he use the word "kill"?
> A Yes, he did; that was the word he used.

Mr. Reid: Was Mr. Mort just simply giving a gesture? A Yes, shaking his finger in his face.

Q Do you know anything Mort said to Pittard? A Yes, he said, "We have a right from Jehovah God to preach this gospel, and you have no right to cut us off; that is our Constitutional right."

Q He said that, did he? A Yes, he did.

Q And then what happened? A Brother Saia had to gather up his things and drive his equipment away, and the Police car drove away,

68 and Roy Mort continued to deliver his speech; this is a proof of it.

Q You didn't see Walter Reid give a lecture? A He did not; I spoke as the announcer and Roy Mort gave the lecture.

Q Under whose direction was this lecture given? A Under whose direction was it given? Under Jehovah God's authority it was given.

Mr. Noonan: I object to this characterization.

A Have I not a right to explain this
69 thing in the way this all occurred, as a citizen of the United States?

Mr. Reid: You have a right, but the question is—

A I have a right as a citizen of the United States.

Mr. Noonan: I don't think you have, in any Court.

Judge Falsioni: The only question here is whether or not there was a permit to use a loud speaker; there is no question here as to Jehovah God nor anything of that
70 nature; the only testimony we want is as to whether or not you had a permit.

Mr. Reid: (To Court) I would like to mention here that the prosecution is basing this whole thing on City Ordinance No. 38, Section 2; is that right, Your Honor?

Judge Falsioni: Yes, City Ordinance 38.

Mr. Reid: Penal Ordinance No. 38, Section 2 says (Mr. Reid proceeds to read the whole of Section 2). That is the end of Section 2 that the prosecution bases its whole case on, and there is not one word

said about having a permit or not having a permit.

Judge Falsioni: Section 3 makes the exception that you have to have a permit.

Mr. Reid: There has never been a word in the whole prosecution about article Number 3.

Mr. Noonan: It is in the Information.

Judge Falsioni: It is in the Information.

Mr. Reid: We would like to say, at this time, that, so far as the case has gone, the defendant has tried to show here that they were within our constitutional rights.

Judge Falsioni: Go on with your case, and you will have ample opportunity to be heard.

Witness (continuing): As I said, we were in the Park giving those lectures four times when we had a permit; and we tried to obtain a permit from the Police Chief and from the Mayor and from Mr. Goehle and we were denied by all three; and they were very specifically told that it was to be a Bible lecture.

Q You said you were sent by the Watch Tower Bible and Tract Society? A Yes, I am sent there from—

Judge Falsioni: Confine your testimony to those two dates, September first and September eighth.

Mr. Reid: You were there when the lecture was read on the first of September? A Right.

Q How long did the lecture continue under the amplifier? A On the first day it continued about

three minutes; and on the 8th about fifteen or eighteen minutes.

Q And on the first it continued how long? A About three minutes, and the Police shut it off; and on the eighth it was for about fifteen minutes.

Q You are certain, now, about the eighth? A Yes.

Q The sound apparatus was interfered with by the Police? A Right.

Q What did you do after the lecture? A We passed out free Bible publications by the Watch Tower Bible and Tract Society, and—

Mr. Noonan: I object to what he did as incompetent, irrelevant and immaterial.

Judge Falsioni: Objection sustained. If you want to tell how this arrest took place, all right; but we are not interested in anything else.

Witness: The Police arrested Brother Saia and took him to the Station on the first of September, and the Bible lecture was in progress till it was finished, and then we gave these away free of charge; and then we left the Park in an orderly manner as is always the case.

Mr. Reid: You say this Society that is conducting these lectures throughout the year is the Watch Tower Bible and Tract Society?
A Right.

Cross-examination by Mr. Noonan:

Q How long have you lived in Lockport? A I believe about eighteen years.

Q How long have you been affiliated or con-

nected with Jehovah's witnesses? A About ten years, I would say.

Q In your work, is it your belief that ordinances and rules and regulations of cities should be passed up, should be overlooked and forgotten, is that your belief? A I have freedom of speech, and the United States Constitution grants me that.

Q You care nothing about public ordinances? A Freedom of speech I have given to me.

Q Under your claim of freedom of speech you claim you have the right not to comply with city ordinances?

Mr. Reid: It has been brought out that this man is within his constitutional rights.

Judge Falsioni: That is your opinion. Answer that question "yes" or "no".

Mr. Noonan: Do you deny that, Mr. Hammond, that you claim you have the right not to comply with city ordinances? A According to freedom of speech we conducted our Bible study.

Q Is it your opinion that you don't have to comply with ordinances is it? A I was operating according to my notion of the rulings of the Supreme Court.

Mr. Noonan: I object to this as not responsive.

Judge Falsioni: That last answer may be stricken out.

Mr. Reid: The witness is pointing out that he will comply with the laws that are in harmony with the Constitution.

A Yes, where it interferes with the preaching of God's word I do not have to comply with ordinances.

280 Mr. Noonan: Now, as a matter of fact, you did obtain a permit and did operate four times previous to that? A Correct.

Q Did you know there was an ordinance in effect? A We did not operate under the ordinance.

Q Prior to September 1st, you operated according to the permit, didn't you? A Yes, I have it in my book.

Q You were refused a permit and still you operated the sound car, didn't you? A Yes, because we couldn't obtain a permit, and the Bible
281 lecture had been announced and had to be—

Q The operator of that sound car was carrying out your instructions? A No, his own instructions as a witness of Jehovah God.

Q In the Jehovah witnesses, to become an ordained minister does it require a certificate? A Isaiah 61 and 62 give us a commission as ordained preachers.

Q Are all your male members ordained ministers, that is, ordained preachers? A They are.

Q Do they have to follow any prescribed study or how long do they take in preparing? A When
282 Jehovah God sees fit that they are prepared to be ordained ministers, then they are ordained ministers.

Q Who directs the operations of this Watch Tower Bible and Tract Society? A It is a Brooklyn Society.

Mr. Reid: You stated where they got their authority; our authority comes from Jehovah; he is Almighty God; we are sent forth to preach the gospel of God's Kingdom.

Mr. Noonan: I object to all this.

Mr. Reid: The reason I brought this up is that there does seem a doubt in the mind of the prosecuting attorney just who Jehovah really is, your Honor.

Judge Falsioni: I guess he knows, all right.

Mr. Reid: Isaiah 61:1 and 2 gives us that statement.

Judge Falsioni: He also asked you a question about your ecclesiastical education.

Mr. Reid: The apostles were not college graduates, were they?

Mr. Noonan: I object to this and move that it be stricken out.

Judge Falsioni: It may be stricken out.

Mr. Reid: The prosecuting attorney brought this into the case, your Honor.

Mr. Noonan: I asked him about his course of study. Do you have colleges and schools?

Mr. Reid: Yes, we do.

Mr. Noonan: Where?

Mr. Reid: Gilead, New York; and we also have the authority that is given to Jehovah's witnesses.

Mr. Noonan: I object to that answer and move that it be stricken out.

Judge Falsioni: Ordered that it be stricken out.

Mr. Reid: Whosoever shall quote the Bible says that you have the right to accept it but if you don't want to you don't need to. That is all, your Honor.

286 OTTO AMIL SCHWARTZ, being duly sworn, testified as follows:

Direct examination by Mr. Reid:

Q Will you give the Court your full name and and occupation? A I am a farmer.

Q Your name? A Otto Amil Schwartz.

Q And your address? A Hoffman Road, Appleton, New York.

Q What is your rural route number?
A R.F.D. 1.

Q Were you at Outwater Park on the first day
287 of September? A Yes.

Q And what brought you to Outwater Park on that day? A I heard there,—I knew a lecture was taking place there, in Jehovah's name, to honor his name; and, being a Jehovah witness, I went there to take part in it, that his name might be vindicated throughout the earth.

Mr. Noonan: I move that the last part be stricken out.

Judge Falsioni: Strike it out.

Mr. Reid: Will you tell the Court what hap-
288 pened that day, Mr. Schwartz? A I got there about five minutes before four o'clock; the special officer that was already in charge there he was talking with the sound car attendant there, and I heard the different suggestions made there that they wouldn't allow us to have the sound equipment run or the loud speaker put on, and he said he would cut the wires if we continued to carry on the program.

Q Who said that? A The officer right there with the white shirt (indicating).

Q James Pittard? A Yes.

Q Now go on, please. A I told him he would have no right to shut this off; that it was our right to carry on this program and that no man would cut this off unless the great Jehovah cut it off himself.

Q What else did you hear? A So he jumped on that light two-wheeled scooter he had there and I saw him go over to the garage or office on Hawley Street, I believe it is; and he was going to call up the Police and have them take care of it; then, in around ten or fifteen minutes the officers appeared with the squad car, and they pulled up and requested to have the sound machine shut off.

Q Who requested that? A The bald-headed fellow there (pointing).

Mr. Noonan: Officer McLoughlin?
A Yes, I think so.

Mr. Reid: And then what happened? A The brother there, Mr. Saia, I was standing alongside of him when he came, and he said, "Shut it off," and I said, "No, don't shut it off;" and he said "If you don't shut it off, I will take you along," and I said, "I will be glad to go with you." The other officer went around the front of the car, Officer Wolfe was the one that brought the microphone up to the car, and I heard a noise like things clattering around, and—

Q What do you mean, "Things clattering around"? A It sounded like the speakers being thrown into the car, and—

Q Who was the officer? A Wolfe.

Q And then what? A He went around and threw one of the speakers into the car; and Officer McLoughlin came around there and I told him.

292 "Don't destroy this man's equipment; there is no use in cutting the wires nor in molesting the equipment in that way," and then I took the wires out and he didn't like it; I took the wires out and put them in the car where they belonged; they told Mr. Saia to come along with them and drive his own sound car up to the Station here, and we also followed up here; and, in the meantime, while this was taking place, the officers were presented with his credentials and with the constitutional rights of the witnesses, and—

293 Mr. Noonan: I object to that as immaterial.

Mr. Reid: You refer to this (holding up yellow card)? A Yes.

Mr. Reid: Which is the ordination slip of Brother Saia? A Yes.

Mr. Noonan: That is Exhibit A?

A Yes.

Mr. Noonan: And the second was the booklet? A Yes; at page 30 showing the constitutional rights; and in turn,

294 when that was handed them, one of them, I am quoting, said that they didn't give a damn for the Constitution nor the Supreme Court laws; that we are living in Lockport and you are to observe the laws of the City of Lockport.

Mr. Noonan: Wolfe and McLoughlin stand up. (Officers stand up)

Mr. Noonan: (to witness) Are those the men who said that? A Yes; they were handed the booklet, both handed the same book and they both said that; they said

they had nothing to do with that and didn't care a damn about it.

Mr. Reid: Are you an ordained minister? A I am.

Q Did you have any opportunity to talk over the microphone that day? A I did not.

Q Who was the speaker? A Roy E. Mort.

Mr. Reid: That is all.

Cross-examination by Mr. Noonan:

Q As a member of Jehovah's witnesses are you of the opinion that your thoughts and ideas according to that organization take precedence over city ordinances? A I do, if they conflict with God's law.

Q You were there only on the first of September? A On both days, the first and the eighth.

Q The loud speaker was being operated on both these days? A That is right.

Mr. Noonan: That is all.

Mr. Reid: Now, Your Honor, I would like to present to the Court at this time—

Mr. Noonan: Just a minute, I am recalling Officer Wolfe.

OFFICER WOLFE, being recalled, testified as follows:

Direct examination by Mr. Noonan:

Q Officer, you have heard the testimony of the defense as to statements you made as to the Constitution when they handed you a certain book; will you tell the Court what you said? A When we asked for credentials or permit they showed

298 us this book and had this page open and I started to read this article on what their rights are etc., and I looked on the cover and it said "Jehovah's Something or Other", and I said I didn't give a damn what they had printed in their book about the Constitution or the Supreme Court; so far as I could see they could print anything they wanted to in that book, and anything they had there didn't affect us any.

Q You didn't say you didn't care a damn about the Supreme Court? A I wouldn't say anything like that.

299 Q And you didn't say that you didn't care a damn about the Constitution? A Why, of course not.

Q You have heard their testimony as to the removal of the equipment they had there, will you tell us about that? A They refused to remove the equipment when we told them to, and I reached in the car and turned the power off, and I took the microphone and put it bottom-ways in through the window; the window in the car that was broken was broken before we had anything to do with it; so far as the speakers or anything like that goes, I didn't touch them; I know the defendant helped 300 take this down and one of the other men helped take it down; myself, I didn't even touch the speakers; the wire was going through where the door hinges are, and that is where the wire was cut.

Q Did you hear Officer McLoughlin make any statement about the book? A No, I did not.

Cross-examination by Mr. Reid:

Q Officer Wolfe, you admit that Jehovah's witnesses did present this book to you, this Exhibit number B? A Yes.

Q It does state on the front here, "Jehovah's Servants Defended", that is what you have reference to, and on page 30 here, you did read some of this? A I started to read it and looked at the title; so far as I could see you had that printed yourself and nothing that I know of will make me go by what you have printed there.

Q You did read Sections 51 and 52? A I started to read it, yes.

Q And they did call to your attention that this was quoting Jehovah's witnesses' constitutional rights? A I didn't fancy reading it, I told you; I turned the cover over and handed it back to you.

Redirect examination by Mr. Noonan:

Q You were under orders of your superiors? A Yes.

Q You were following out your orders? A Yes.

OFFICER McLOUGHLIN, being recalled, testified as follows:

Direct examination by Mr. Noonan:

Q When defendant's Exhibit B was shown to you did you make any remarks about it? A I made no remarks; didn't reach out for it; I was interested only in seeing the permit they had if they had one.

Q And they had none? A That is right.

Judge Falsioni (to Mr. Reid): Do you want to cross-examine this officer?

Mr. Reid: No; I would like to make a motion to the Court, and before I conclude in this I would like to present to the Court these Supreme Court

rulings which we believe are the final word in this whole case. (Judge Falsioni looks at paper which Mr. Reid hands him.)

> The State of New York, County of Niagara, City of Lockport, Police Court; the complainants are James Pittard and the City of Lockport, New York, and the defendant is Samuel Saia. Now comes the defendant at the close of all the evidence and makes a motion to dismiss the complaint on the grounds that complainants have utterly failed to make out a case against the defendant, and move for a finding of "not guilty" upon the following grounds: the undisputed evidence shows that the defendant is not guilty as charged in the complaint; the defendant is an ordained minister, preaching the gospel of God's kingdom by explaining to the people the Bible prophecies; this activity of preaching is clearly within the protection of the Constitution, and therefore the Ordinance, as properly construed, does not apply to the activity of this defendant.

And I hand you a Memorandum of Law, same State, same County and Court, and the same plaintiffs against Samuel Saia, defendant, this is a copy (hands paper to the Judge). And I give you a copy of the Memorandum of Law, which I ask you to read over and consider carefully before you pass judgment in this case.

Judge Falsioni: The first motion presented is denied, with the right to an exception. The Judge will reserve decision till tomorrow morning at nine o'clock.

STATE OF NEW YORK
POLICE COURT — CITY OF LOCKPORT

(Same Title)

September 11, 1946.

Judge Falsioni: The Court has reached its decision and will read its decision.

Defendant Saia is charged with violating the City of Lockport, New York, Penal Ordinance No. 38 on two Separate occasions; namely, September 1, 1946, and September 8, 1946;

This Ordinance is entitled "PROHIBITING UNNECESSARY AND UNUSUAL NOISES." Section 2 of the Ordinance reads:

> Sec. 2. Radio devices etc. It shall be unlawful for any person to maintain and operate in any building, or on any premises or on any automobile, motor truck or other motor vehicle, any radio device, mechanical device, or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public places or of persons in neighboring premises.

Section 3 reads:

> Sec. 3. Exception. Public dissemination, through radio loud-speakers, of items of

news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission from the Chief of Police.

The only question presented here, to be decided by this Court, is whether or not the City Penal Ordinance is violated by the defendant. The defendant has admitted, under oath, that he operated the loud speaker in a public place on two separate occasions, without first obtaining a permit from the Chief of Police. The City of Lockport does not deny the right of the Jehovah's witnesses to distribute literature on the streets or to assemble in a public place to have a public meeting; nor does the Penal Ordinance in question prohibit the same.

The City of Lockport and this Court take the position that the United States Supreme Court cases which the defendant has cited are not on point in this case. In our case there is no prohibition of the activities of the Jehovah witnesses in distributing printed matter or preaching the gospel of Jehovah, but there is a prohibition as to the use of radio loud-speaker in so doing without first obtaining a permit from the Chief of Police. This permit is necessary, and it is required for all faiths and denominations and for all activities carried on in a public place or public street in said City where a radio loud-speaker is to be used.

The Law as to unnecessary and unusual noises prohibited by City of Lockport Penal Ordinance No. 38 is the Law and will be the Law until changed by future legislation or by decision of a higher Court of Record.

I find the defendant guilty on both charges, and he is fined fifteen dollars on each charge or thirty days in jail.

DANIEL P. FALSIONI
Judge

Mr. Reid: Your Honor, I make application to appeal this case to a higher court.

Judge Falsioni: The application is granted.

Mr. Reid: And I request the necessary appeal blanks and appeal bond and request assistance in preparing such appeal papers, and also that you grant time and opportunity to the defendant to employ counsel, and that his attorney be given time and opportunity to perfect this appeal.

STATE OF NEW YORK
POLICE COURT—CITY OF LOCKPORT

(Same Title)

September 16, 1946.

Judge Falsioni: The Information in this case reads:

> That on Sunday, the 15th day of September, 1946, within the said City of Lockport, in said County of Niagara and State of New York, one Samuel Saia, 208 Vermont Street, Buffalo, New York, did unlawfully, wrongfully, willfully feloniously and against the statute in such case made and provided, violate Lockport City Penal Ordinance number 38: PROHIBITING UNNECESSARY AND UNUSUAL NOISES, section 2 of same relative to radio devices

etc., in that said defendant did maintain and operate on an automobile a radio device and loud speaker whereby the sound therefrom was cast directly upon the streets and public places in said City of Lockport, New York, to wit, OUTWATER PARK. Such radio device was maintained for the purpose of attracting the attention of the passing public and the people in said park, and the sounds coming therefrom could be heard to the annoyance or inconvenience of travellers upon the street and the users of said public park and neighboring premises.

And that said defendant did also violate subdivision 3 thereof in that he had no permit therefor.

Said defendant thereby committing a violation of Penal Ordinance No. 38.

Before I hear your plea I will tell you that you have a right to be represented by counsel and you have a right to an adjournment in order to obtain counsel.

Mr. Reid: He pleads "not guilty", your Honor, and would like to have a couple of weeks to secure counsel.

Mr. Noonan: As the legal representative of the City, I object to a two-weeks' adjournment. The disposition of this case should be made within the next two days. He is not a first offender; he is a second offender, in fact, a third; and I firmly believe they will be up there next Sunday again.

Mr. Reid: I ask for a three-weeks' adjournment, inasmuch as this is an entirely new and different case.

Mr. Noonan: I will agree to a two-weeks' ad-

journment if this man in charge will agree to stay away from that park with an amplifier, pending the trial of this case; otherwise, I insist upon only three days. If he will make a promise that he and they will not be out there at Outwater Park next Sunday, I will agree to a two-weeks' adjournment.

Judge Falsioni: (After considerable discussion) Adjourned to Saturday morning, September 21, 1946, at 9:00 o'clock.

Transcript of Testimony

[Upon Second Trial]

STATE OF NEW YORK
POLICE COURT—CITY OF LOCKPORT

(Same Title)

Trial of the above defendant held before the Hon. Daniel P. Falsioni, Police Justice, upon two Informations charging violations of City of Lockport Penal Ordinance No. 38, Sections 2 and 3, alleged to have been committed on September 15, 1946 and September 22, 1946, at the Police Headquarters in the City of Lockport, New York, on Saturday, September 28, 1946.

Appearances:

James A. Noonan, Esq.,
Corporation Counsel, *For the People.*

Julius Himelfarb, Esq., *For Defendant.*

The Court: The People against Samuel Saia?
Mr. Himelfarb: Ready, your Honor.

Mr. Noonan: If the Court please, I believe that the last time we were here it was stipulated that these two alleged violations be tried together today.

The Court: The 15th and 22nd?

Mr. Noonan: One alleged to have been committed September 15th and the other September 22nd, be tried together today. I merely want to get that on the record.

Mr. Himelfarb: That is right, your Honor. It was stipulated we try both offenses together.

Mr. Noonan: At this time on behalf of the People I would like to offer in evidence a certified copy of the ordinance under which this charge was laid.

Mr. Himelfarb: I object to it that nothing more proper than the legal ordinance itself. I object to any certified copy.

The Court: Have you a City Ordinance book?

Mr. Noonan: I will get one. I offer for identification, if the Court please, Common Council proceedings of the City of Lockport, for the year 1945 and on page 357 the matter pertaining to the subject entitled "Penal Ordinance No. 38" prohibiting unnecessary and unusual noises. I offer this for identification.

Mr. Himelfarb: You are offering it for identification?

Mr. Noonan: That is right.

Mr. Himelfarb: No objection.

Mr. Noonan: I would like to be sworn, if the Court please.

JAMES A. NOONAN, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

The Witness: I am the Corporation Counsel of the City of Lockport, The Common Council Proceedings are published each year in a book volume. The volume for the year 1945 is a copy of the proceedings of the Common Council published for that year. The article on the matter I have referred to on page 357, according to this book, which is the official proceedings of the Common Council, was duly passed at the meeting of December 3, 1945.

I offer this in evidence.

Mr. Himelfarb: May I see that please? This section 1?

The Court: 2 and 3.

Mr. Noonan: The whole ordinance I offer.

Mr. Himelfarb: The whole ordinance? Is he being charged with a violation of the whole ordinance or only a part of the ordinance?

The Court: Sections 2 and 3.

Mr. Himelfarb: Sections 2 and 3. Are you offering the whole ordinance? He is charged with sections 2 and 3, is that right?

Mr. Noonan: That is right. It is a part of the Ordinance.

Mr. Himelfarb: I have no objection to your offering subdivisions 2 and 3 of the Penal Ordinance No. 38. But I have objection to your putting in the whole ordinance in evidence. He is charged with the violation of Sections 2 and 3 and I have no objection to that being offered in evidence. I do object to the whole ordinance being put in as an exhibit.

The Court: Sections 2 and 3 will be allowed.

(Sections 2 and 3 of City of Lockport Penal Ordinance No. 38 were received in evidence and marked People's Exhibit "A".)

ALBERT G. WARD, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan:

Q Are you the City Engineer of the City of Lockport? A Yes.

Q And you have been associated with the City how many years? A 24.

Q Are you familiar in your duties with the original grant to the City of Lockport by Samuel Outwater? A I am.

Q Do you know of Outwater Park? A Do I know of Outwater Park?

Q Yes. A Yes.

Q Outwater Park is located in what part of the City? A In the Sixth Ward, the north section of the Sixth Ward.

Q And there are certain tracts divided by a roadway or street? A Yes. Divided by Price Avenue.

Q That runs in which direction? A East and West?

Q On the north side of Price Avenue does a part of this Park go north to Glenwood Avenue? A Yes.

Q Was that the original grant from Samuel Outwater? A Yes.

Q That is used by the public for park purposes? A Recreation, all purposes.

Q There is located in there various things, aren't there? A A wading pool, picnic benches and fireplaces.

Q Benches and chairs? A Benches.

Q That particular tract on the north side of

Price Avenue has a frontage of how many feet? A About 1600 feet.

Q It runs back to an escarpment? A It runs back to Glenwood Avenue.

Q Do you know what the depth of it is approximately? A It varies from 250 feet to 400 feet.

Q Now, I show you, Mr. Ward, a certified copy of a deed given by Samuel Outwater to the City of Lockport, dated August 20, 1920, and which purports to have been recorded August 25, 1920, in Liber 440 of Deeds at page 498, in the Niagara County Clerk's Office. I ask you to look over this deed and tell me if in your opinion that particular description of conveyance covers that north tract? A It does.

Mr. Himelfarb: You offer this in evidence?

Mr. Noonan: I am going to offer it now.

Mr. Himelfarb: You offer it and I will object.

Mr. Noonan: I offer it, if the Court please, in evidence.

Mr. Himelfarb: Your Honor, I object to any offer of any certified copy because there is no record as proper as the regular deed itself.

The Court: Seeing this is a certified copy from the Niagara County Clerk's Office I will receive it in evidence.

Mr. Noonan: You might swear me in and I will straighten that out.

The Court: You have been sworn.

Mr. Noonan: As Corporation Counsel of Lockport I looked for the original deed

in our records in the City Hall with the help of the City Clerk and other employees. We were unable to find the original deed. I went to the County Clerk's Office and had this certified copy made.

Mr. Himelfarb: I offer the same objection. The liber and page, the book could be brought in and offered in evidence. I object to any certified copy of that being offered in evidence. If he got that from the record, the record itself could be put in evidence, not a certified copy.

The Court: I will receive it in evidence. You may have your exception.

Mr. Himelfarb: Thank you.

(Deed from Samuel Outwater to City of Lockport, dated August 20, 1920, was received in evidence and marked People's Exhibit "B".)

Mr. Noonan: I call the Court's attention to a portion of this deed which reads as follows: "The property conveyed by this deed is hereby given to the City of Lockport for Park purposes in memory of my wife Luella Scott Outwater, and my parents Tunis Outwater and Mary E. Cudaback Outwater who are resting in Glenwood, just below, and it was suggested by the Park Commissioners that the Park should be designated as the 'Outwater Memorial Park' and the City hereby accepts the same with the understanding and agreement that the City shall at all times maintain said property for Park purposes exclusively."

Mr. Himelfarb: I make the same objection, your Honor, in reference to what the Corporation Counsel has read. The certified copy is not proper evidence and the record of the County Clerk should have been produced and not a certified copy.

The Court: Overruled.

Mr. Himelfarb: Exception.

Mr. Noonan: That is all, Mr. Ward. Do you have some questions?

Mr. Himelfarb: No questions.

NELSON GOEHLE, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan:

Q What is your position with the City? A City Forester and Superintendent of Parks.

Q On Sunday, September 22nd last, were you at Outwater Park? A I was.

Q What time did you go there? A I would say about 3:30.

Q And were there people in the Park at the time? A Yes.

Q And do you know as far as numbers go how many would you say were there? A I would say approximately 50 people.

Q 50 people. Did you stay in the park some length of time? A I did.

Q Along about 4 o'clock of that afternoon did you notice something occur in the park which focussed your attention on it? A I did.

Q What occurred about that time? A Well,

40 a car drove up and some loudspeakers were attached to the car. This was at a point approximately in the center of the—approximately what we call the picnic area of the park. Some loudspeakers were attached to the car. Then a group of people assembled. I believe there were 18 people there in that group, and an amplifier was attached by a cord to this car and—

Q A microphone? A A microphone I should say was attached. This was turned on and a lecture was started.

Q When you noticed that how far away were
41 you from the car with the amplifier? A Approximately 250 feet.

Q Toward the east or west? A East.

Q Were you seated? A I was sitting at a picnic table.

Q Prior to the time this amplifier started working were there any other amplifiers in the park that day? A No.

Q Now about the peace and quietness, the noise, if any in the park? A There was no noise in the park.

Q You say this cord was attached to and ran
42 from a microphone to the car. And what occurred then? Someone spoke over it? What happened? A Yes. A man spoke over the microphone.

Q Spoke over the microphone? A Yes.

Q Where was the microphone with relation to this car? A I would say it was 15 feet from the car, approximately 20.

Q In back of it or in front of it? A It was behind the car. That is, behind and to the north of the car. The car was situated on the north side of the road.

Q Where was the group that was listening to

him? Where were they located? A They were seated about 50 feet from him on a group of benches that had been set together. They had set them together, I believe.

Q In front of him? A Yes.

Q To the north? A To the north.

Q Was the car on the north side of Price Avenue or what side? A On the north side of Price Avenue.

Q Between where the microphone was, was there anything? A walk or anything? A The microphone was located on the edge of the sidewalk.

Q That is how far distant from the edge of the road? A I would say about 10 feet.

Q In front of the microphone about how many feet would you say these people were seated? A Approximately 30 feet.

Q Now, could you hear what was said over the amplifier? A Yes, I could hear that.

Q Did you have any difficulty in hearing it? A No.

Q What next did you do? A Well, I just sat there and listened to it during that time. That was about ten minutes.

Q Then did you go someplace? A I walked back to the rose garden and through the rose garden and through the trestle.

Q Was that north of where you were?

Mr. Himelfarb: I object to counsel leading the witness. Let him testify.

Mr. Noonan: That is what I am doing. I am trying to shorten this.

Mr. Himelfarb: Let him testify what he did, don't you.

46 The Witness: I walked into and through the rose garden to the point above the picnic area over there and looked below on some people below there at the north end of the escarpment or park. I could hear the amplifier over there too. I came back to the picnic table and sat there.

Q Do you know in what direction these horns were facing on top of the car? Do you recall? A They were facing directly at the assembled audience. They were on an angle, I would say, northeast and northwest.

47 Q Now, did you see at that time any other people besides the group in front of the microphone in the park? A Oh, yes.

Q Were there more other people or less other people in the park than in this group in front of the microphone? A I think there were quite a few more altogether.

Q Did you have any complaint that day about the use of the amplifier or any noise? A There were several men around and they remarked it was noticeable; it was annoying them.

48 Q And previously in your official position have there been complaints made about the use of the amplifier? A There had.

Q Now, this particular area in which the amplifier was located is what is called—what part of the park? A Well, we refer to that as the picnic area in there. We have within a distance of about 500 feet in different directions from the amplifier, there are approximately 30 picnic tables and probably 75 ordinary park benches and fireplaces and facilities for picnics and recreation.

Q Do you permit any games or anything of

that kind to be played in that area? A Not in that area.

Q There are other areas in the north section you do have those things? A We have a children's playground. It is approximately, 400 or 500 feet from where this amplifier was set up.

Q What kind of a day was it? A It was a very nice day; Very pleasant day. Still and quiet.

Q A sunny, warm day? A It was.

Q And did you see Officer Pittard there? A I did.

Q Were there some other people sitting at the table with you? A There were.

Q You talked to them? A I did.

Q Was there a time you noticed some police appear there? A Yes.

Q That was about how long after the amplifier first started? A Well, I would say about 20 minutes.

Q And then after the police left did the amplifier still continue to operate or had it ceased? A It stopped after the police got there.

Q Did you go over when the police were there? A Yes.

Q Did the police shut the amplifier off? A It shut off right after they got out of the car. I didn't see them shut it off.

Q Did you linger there some time after the police left? A About ten minutes, yes.

Q And did the speaker who was talking over the microphone when the amplifier was operating, continue or quit talking?

Mr. Himelfarb: I object to Counsel leading. There is no testimony there was a speaker talking. I move to have it stricken out.

52 Mr. Noonan: That can go out if he wants.
The Court: Objection sustained.
Mr. Himelfarb: It is stricken out?
The Court: Yes.

Q Was there anybody talking over the microphone? A Yes.
Q Will you look around this audience. Can you recognize the man talking over the microphone?

Mr. Himelfarb: When?
Mr. Noonan: Sunday afternoon on September 22nd.
53 Mr. Himelfarb: We have no testimony before the Court the microphone was—somebody was talking. The microphone was shut off then. You mean after the police left or before the police came?

Mr. Noonan: Before the police came was there a man talking in front of the microphone?
The Witness: Yes.
Q Was sound coming out of the amplifier? A That is right.
54 Q After the amplifier ceased and the police went away did this gentleman you saw talking in that microphone continue to talk? A He walked away from the microphone as soon as it stopped operating and walked over to a point I would say 20 feet from the assembled group and continued with his talk.
Q The amplifier wasn't in use then? A That is right.
Q There were how many of his flock there grouped around him? A I counted 18 people at one time there.

Q Do you recognize in this audience that man you spoke of?

Mr. Himelfarb: I object to Counsel pointing to any individual.

Mr. Noonan: I am not pointing.

Mr. Himelfarb: You pointed with your finger. What is that (indicating)?

Mr. Noonan: You may use your finger for pointing, I don't use mine. Let him pick it out in the courtroom.

The Court: Let the witness pick out the man in the Court Room.

The Witness: I don't seem to be able to pick out the man.

Q You were not in the park on the 15th, a week ago Sunday? A No.

Q When this alleged other violation occurred you were not there? A No.

Q Did you yourself have any talk on Sunday afternoon, the 22nd, with the defendant, Mr. Saia? A No.

Q You know who the defendant is? Will the defendant rise? He should be sitting in front where these witnesses—

Mr. Himelfarb: Just a moment. Sit down, Mr. Saia. I object to the witness standing up. Let him point out the man.

Mr. Noonan: I demand this defendant sit inside the rail where he belongs.

The Court: The defendant should be brought in.

Mr. Himelfarb: This man is testifying, not the Corporation Counsel. Let him pick him out. He has no authority to ask the man

358 to step up. This man is testifying; let him pick him out.

The Witness: I have never seen the defendant before the police cut off the microphone. I saw him take the defendant.

The Court: Do you know who the defendant is?

The Witness: No, I don't. I know his name is Saia.

The Court: Do you know who he is?

Mr. Noonan: Have the defendant rise and see if he recognizes him.

359 Mr. Himelfarb: I object.

Mr. Noonan: It doesn't make much difference.

The Court: I think the defendant ought to be inside the rail.

Mr. Himelfarb: I object to him standing up and identifying himself.

The Court: I think the defendant should be brought inside the rail.

Mr. Noonan: I think the defendant should be pointed out or sit where he should be sitting.

360 Mr. Himelfarb: He is in the court room.

Mr. Noonan: He should be inside the rail where he belongs.

Mr. Himelfarb: He has a right to sit in the back.

Mr. Noonan: I don't care where he sits. We will get on with this thing. It doesn't make much difference.

Q In your experience working in the park during a period of how many years? A Since 1932.

Q In that particular area of the park have you ever heard or seen of your own knowledge, your own eyes or ears, any amplifier used? A None other than this one.

Q The one on the 22nd. A Yes.

Q Now, this Outwater Park, is it a large or small tract of land? A I would say it is a large tract of land.

Q Consisting of about how many acres? A The north side of the road or the entire?

Q That is right. A The part on the north side of the road is 28 acres.

Q There are other portions of the park? A That is right.

Q On the— A South Side.

Q South side? A Yes.

Q Is the park frequented by people from the community? A Yes, sir.

Q And the people in general? A That is right.

Q And during the summer months on Sundays do people come there in any particular numbers? A Well, of course, that depends a whole lot on the weather. On the very nice days there will be approximately 1,000 people in it. In fact, our records show there will be 1,000 people.

Q If the weather is good? A Yes.

Q This particular time was Fall? A Yes.

Q This north area in which the people were standing, in which the amplifier was being operated, what is the park used for? What things are there for the use of the public? A It is intended entirely for a picnic area and a place where people can come and enjoy peace and quiet, the rose gardens and beautification.

64 Q In certain parts are there other things for people's attractions? A Yes.

Q What? A We have the children's playground and wading pool which is on the same side of the road as the picnic area. To the west and on the south side we have baseball diamonds, horseshoe pitching, lawn bowling courts, and we have other types of recreation.

Q When you walked over to this point which you testified was 500 feet from the amplifier did you see any people over at that point? A There were some people down in the lower picnic area
65 we have referred to getting ready to have a picnic.

Q Was any complaint made to you by those people? A Not to me, no.

Mr. Noonan: You may ask.

Cross-examination by Mr. Himelfarb:

Q Were there automobiles, traffic, going in and around the park at that time? A There was automobiles going through Price Avenue, yes.

Q Well, I haven't been through this park. I haven't the slighest idea. Was there traffic running
66 in the park, automobiles? A Just a double drive going through the park dividing the north and south side. Cars are going up and down that.

Q And were cars going on the outside of the park up and down too? A What do you mean by "outside"?

Q I am assuming, let us say this table is the park and there is a double road going through it? A That is right.

Q On the outside, were there cars going? A Those roads are unfavorable. From the point I was—

Q How far are those roads from where this loudspeaker was? A Glenwood Avenue I believe is 700 feet from Price Ave.

Q Is that from the loudspeaker where cars are going, 700 feet away? A On the outside of the park, yes.

Q Where this loudspeaker was about 700 feet away on the outside of the park where automobiles were going up and back? A That isn't a street very much used. Just leads to a cemetery; not a busy street.

Q Were there automobiles going through? A I don't know.

Q You couldn't see that? A Unless I went there.

Q Could you hear any automobiles going through? A No.

Q Could you hear any automobiles honking horns? A No.

Q Any automobiles honking horns on the road through the park? A If there were any horns I don't recall hearing them.

Q You said at the time this loudspeaker was in progress there was 50 people in the park approximately? A I would say 50 other than this group assembled for the meeting.

Q Did you testify to that? Other than the group, 50 people in the group? A That was my intention, 50 other than the group.

Q You want to change your statement?

Mr. Noonan: I think his statement, the record speaks for itself, if I may interrupt. 50 besides.

Mr. Himelfarb: I object to counsel wanting to read the record. I am cross examining.

70 The Court: Read the record back.

Mr. Himelfarb: Before you read the record, didn't you testify previously there was 50 people in the entire park?

A At the time I arrived at the park?

Q When you started to testify a few moments ago you said there were 50 people in the park? A Yes.

Q Do you want to change that statement now? A No, I don't want to change it.

71 Q Were there more than 50 people in the park? A What time are you referring to?

Q At the time this loudspeaker was going? A Yes.

Q When you testified previously there were 50 people in the park you want to change that statement? A No.

Mr. Himelfarb: Will you read the record, that statement where he said 50 people in the park?

(Reporter reads from witness' direct
72 examination.)

Q You said there were 50 people in the park previously in this testimony we just read. Now you said besides the people around the microphone. Do you want to change that statement? Or do you want to stand on your first statement? A You are talking about two different times.

Q When you got there at 3 o'clock or 3:30 when there were people around the microphone you said 50 people in the park at that time? A That is right.

Q When the microphone was in progress there was 50 people in the park? A I did not.

Mr. Noonan: I object to this.

The Court: Let the witness testify.

Mr. Noonan: It is improper cross examination.

The Witness: At the time I arrived in the park there were 50 people.

Q Was the microphone going then? A No.

Q How long was it before the microphone did go? A I think the microphone came on at 4:10. I arrived there at 3:30.

Q You testified some people were making complaints about the noise of this microphone, that is right? A That is true.

Q Did you get their names? A I know who they are.

Q Did you write them down at that time? Did you know those people? A I knew them well.

Q How many people were complaining? A Well, I heard this one person complain at that time.

Q What is his name? A Gilbert Van Wyck.

Q Who else was complaining? A I didn't hear anyone else complain at that time.

Q By "that time" you mean while the microphone was in progress? A Repeat that please.

Q By "that time" do you mean while the microphone was in progress? A That is right.

Q While the microphone was in progress a man by the name of Gilbert Van Wyck complained? A Yes.

Q What did he say? A He said it was a damn shame a thing like that had to be allowed to

play and disturb the peace and quiet of the park, or words to that effect.

Q Is there a baseball park within a short vicinity of the park? A Baseball grounds, there is.

Q How far away? A That is about 500 feet. The north fence of the baseball field is 500 feet from the south side of the road or approximately 600 feet from the picnic area.

Q Do they use a loudspeaker in the baseball diamond or park? A They do.

Q Can you hear that in the—what is the name of this park?

The Court: Outwater.

Mr. Noonan: Just a minute. I object. It has no bearing on the charge laid against this defendant.

The Court: That wasn't brought in.

Mr. Himelfarb: I am cross examining. He said some people were camplaining of the noise of the amplifier or loudspeaker. I want to know if when the baseball diamond is going whether they can hear that noise and whether there are complaints. I think I have a right to cross examine. You asked that question.

Mr. Noonan: Go ahead. You are bound by his answer.

The Witness: What is the question?

Q This baseball park near Outwater they use a microphone and loudspeaker every so often? A That is right.

Q While this loudspeaker is in progress can you hear it in Outwater Park? A You can if

the wind is blowing from the south you can hear it.

Q You can hear it? A You can hear it.

Q Do people complain when they are in the park about the loudspeaker in the baseball park? A I have never had any complaints.

Q Did this loudspeaker annoy you? A Which one are you talking about?

Q The loudspeaker which we are trying this morning; the loudspeaker at the Outwater Park? A It did.

Q Did it annoy you very much? A Well, it annoyed me to the extent it was distracting.

Q Did it make you angry? A No.

Q It was the noise that annoyed you? A Well, it was disturbing.

Q Did it disturb you because the people speaking over the loudspeaker were of a different denomination than you? A No, sir.

Q Every Sunday morning about six or seven o'clock there are big bells being rung by various churches, is that so? A That is right.

Q Do they annoy you?

Mr. Noonan: I object to that.

The Witness: No sir.

Q This loudspeaker, that did annoy you? A That did.

Mr. Noonan: Just a second, There is no evidence that at six o'clock every morning bells are being rung. I move to strike it out as not proper cross examination.

Mr. Himelfarb: He testified he hears them.

The Court: It can be stricken out.

Mr. Himelfarb: Although he testified he heard these bells at six or seven o'clock it can be stricken out?

The Court: Counsel raised an objection before the question was answered.

Mr. Himelfarb: It was answered. Will you read it.

Mr. Noonan: I object to any questioning along those lines as having no place in this trial.

The Court: There is nothing in this trial about church bells ringing. It may be stricken out.

Mr. Himelfarb: May I have that question read and his answer to the questions?

Mr. Noonan: Read the question before.

(Last question and answer read by the Reporter.)

Mr. Himelfarb: He did answer that question.

Mr. Noonan: That is no evidence bells are rung. He presumes they are rung. He proposed the question to the witness.

Mr. Himelfarb: He is your witness.

Mr. Noonan: He isn't my witness on that particular subject. I said nothing about it.

Mr. Himelfarb: He is your witness put on the stand. He testified he heard them.

Mr. Noonan: Not from me.

Mr. Himelfarb: Well, from me.

The Court: The objection was raised before the question was answered. It is stricken out. I am the Judge. It is stricken out.

Mr. Himelfarb: May I have an exception?

The Court: You may have an exception. Proceed.

Mr. Himelfarb: O.K.

Q After the loudspeaker was shut off did you listen to the man who was delivering this lecture or discourse? A I was 250 feet away. I couldn't hear him when the speaker was shut off. I walked down after he had walked up closer to his group and stood within about 75 feet of the group. I could hear him talking then, I would correct that to 50 feet to the group.

Q What he was talking about, did that annoy you? A No, I can't say that annoyed me. I could hardly hear it. I couldn't make out the words exactly.

Q Could you hear any of it? A I could hear an occasional word.

Q Were any words he said distasteful to you? A No.

Q How long after this loudspeaker was shut off did he continue talking? A I don't know because I left the park. He was still talking when I left the park.

Q How long did you stand around there? A I would say about 15 minutes.

Q Did you leave the park entirely? A I did.

Q Or did you go to some other part of the park? A I left it entirely.

Q While you were there this Van Wyck was the one who objected to this loudspeaker? A Mr. Van Wyck spoke about it. There was a discussion about the loudspeaker among other people there. I can't recall now exactly what they said.

Mr. Himelfarb: That is all.

Mr. Noonan: That is all.

GILBERT VAN WYCK, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan:

Q What do you reside? A 194 Prospect Street, Lockport, New York.

Q Your business or occupation? A Caretaker at the Olson Building.

Q On September 22nd last did you go to Outwater Park in the afternoon? A I did.

Q You arrived there about what time? A Oh, about 1:30, quarter to 2.

Q What was the purpose of your going to the park? A Oh, I go to the park frequently for recreation purposes—relax.

Q Were you in the park from that time up to—

Mr. Himelfarb: He can testify what time he was there.

Q O.K.? A I would say I went to the park about 1:30 or a quarter to 2 and left, I think, came downtown on the 5 o'clock bus.

Q During your stay in the park did you hear any amplifier being used? A Yes.

Q And you first heard that amplifier at about what time? A Oh, in the vicinity of 4 o'clock.

Q And you were how far away from the amplifier then? A Oh, approximately 250-300 feet.

Q West or east? A East.

Q Was the amplifier to your back or was it in front of you or where? A To the right.

Q To your right, I see. And that amplifier continued for about how long? A Oh, approximately maybe 25 minutes until the police arrived.

Q And where the amplifier was did you notice any group of individuals? A Yes.

Q And could you give us some estimate about how many there were? A Why, in that group that was seated listening to it I would say probably 25 people. 20—20—I didn't count them.

Q Were there any other people in the park besides that group? A Oh, yes.

Q Could you say whether the number of people was greater or smaller? A Oh, considerably greater.

Q Were they scattered around the park in various places? A Yes.

Q Before the amplifier started did you see this group come into the park? A No, I don't think—particularly didn't take notice of them.

Q Did you see the amplifier when it was set up or arranged in the park? A No, I don't think so—didn't notice it.

Q Your first attention was attracted to it by the noise, I mean the words that came out of it? A That is true.

Q Did you have any difficulty in hearing them? A None whatever.

Q At that time were you sitting down or standing up? A I was at the time they started broadcasting I was sitting down.

Q Talking to some people? A Yes.

Q What was the effect of the use of the amplifier, the words and tone that came out of it, upon you seated in the park? A Well, it was disconcerting, now, when you were carrying on a conversation. I would say that much.

Q Did it in any manner annoy you? A More or less, yes. It couldn't help but annoy anybody.

Q You were carrying on a conversation? A *Yes.*

Q Were you having competition from this amplifier? A Naturally.

Mr. Noonan: You may ask.

Cross-examination by Mr. Himelfarb:

Q Mr. Van Wyck, were there automobiles going through the park at the time this loudspeaker was working? A Well, I seen some go through.

Q Any horns being blown? A Not that I heard.

Q Do you go to the park often? A On the average about six days a week.

Q Now, while you were in the park there did you hear the loudspeaker being used at the baseball diamond, the baseball park nearby? A Never on Sunday and I attend pretty near every baseball game there is out there.

Q You go out there nearly every Sunday? A Pretty much nearly every Sunday.

Q Were you in the park on the 8th of September? A I wouldn't say for sure on the 8th. I was there on the 15th.

Q You were not there on the 8th? A I wouldn't say I was or not—can't recall.

Q Did this loudspeaker annoy you? A I didn't hear that date?

Q I am getting back to the 22nd. I didn't make myself clear. Did it annoy you on the 22nd? A Well, annoy is—I would say it was disconcerting.

Q It didn't irritate you? A Well, not particularly.

Q And did it make you angry? A Oh, no.

Q Were you in disagreement with what came *out of the loudspeaker*? A *No.* I have no quarrel with any religious sect at all. I am here because I was subpoenaed and I had to come.

Q Now, on Sunday mornings do you hear loud bells of various churches ring throughout the city?

Mr. Noonan: I object to that as leading.

The Court: Objection sustained. The bells of the city of Lockport are not on trial.

Mr. Himelfarb: They are on trial. This is a religious issue.

The Court: There is no religious issue in this case whatsoever.

Mr. Himelfarb: I think there is. I want to find out if the bells of churches annoy him as much as this loudspeaker annoyed him.

The Court: The objection is sustained.

Mr. Himelfarb: May I have an exception?

The Court: You may have an exception.

Q Who were you talking with there? A I was talking with several different people there.

Q Do you know what their names are? A No —some of them. Talking to Mr. Goehle and Mr. Moran, Mrs. Whalen, Mattie Glynn—probably pretty well acquainted with a lot of people.

Q Which one of these people were irritated by this loudspeaker? A Well, now, which one I don't know. We were all talking about it.

Q Were they angry about this loudspeaker? A No, I don't think anybody was angry at all.

Q Did they voice their opinion they do not agree with the principles coming over the loudspeaker? A No, that wasn't the opinion at all about it.

Q Did you lodge a complaint with the Police Department? A No, sir. I told you before I have no quarrel with any religious sect.

Q Do you know whether these other people you were talking to lodged a complaint with the Police Department? A I do not.

Q You were subpoenaed to come here this morning? A I was.

Q How did the police know you were there? A I presume somebody knows me. The Police know.

Q Did the Police ask you on the 22nd, when the loudspeaker was in progress, whether you were annoyed? A No.

Q They didn't talk to you at that particular time? A No.

Q Personally you didn't lodge any complaint? A No, sir.

Mr. Himelfarb: That is all.

Mr. Noonan: That is all.

JOHN M. MORAN, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan:

Q Where do you reside, Mr. Moran? A Prospect Street.

Q What number? A 422.

Q And where are you employed? A Parks Department, City of Lockport.

Q Now, on September 22nd last, that is last Sunday— A Yes, sir.

Q —were you in Outwater Park in the afternoon? A Yes, sir.

Q Were you with Mr. Van Wyck, the last witness? A Yes. I met him there.

Q And do you recall hearing an amplifier that afternoon? A I do.

Q Where were you at the time you first heard it? A I was sitting at a picnic table down east of where the microphone was, the other end of the park.

Q Do you remember when the amplifier and microphone and automobiles arrived at the point where you later heard the noise from that area? A Yes.

Q About what time was that? A Oh, 4 o'clock; in the neighborhood of 4 o'clock.

Q Was there a group assembled around where the amplifier was? A Yes.

Q Could you give us some idea how many people were there? A Oh, 18—20, somewhere in that neighborhood.

Q And you were located about how many feet away? A Oh, about 100 yards I would say.

Q 100 yards? A About the length of a football field.

Q From where you were did you see the amplifier set upon the top of this car? A Yes.

Q Did you hear it when it first started operating? A Yes, I did.

Q And were you then with Van Wyck? A Yes; I was sitting there.

Q Sitting at a bench? A Yes, sir.

Q And was your brother there? A Yes, sir.

Q Your brother—Harry. Was Mr. Goehle

406 the Superintendent of Parks there too? A Yes.

Q Now, when the amplifier was set up were any wires or anything run out to a microphone that you recall? A No.

Q Whose voice did you hear if you can tell us? An individual's voice over the amplifier? A Yes; it was a man's voice.

Q It was a man's voice. From where you were could you see some man? A Yes.

Q Was he speaking? A Yes.

Q He had something in front of him? A Yes.

407 Q What did he have in front of him? A All I know was a book, papers or something.

Q Did he have some apparatus in front of him? A Yes, he had some kind of a stand there.

Q Then you heard this voice over the loud-speaker? A Yes.

Q Now, was it clear or dull? How was it? Just describe it, you were there? A Well, it wasn't too clear, You could hear a word once in a while. That is all you could hear.

Q You were carrying on a conversation? A Yes.

408 Q How did it affect you? How did it impress you? A Well, every once in a while you would be talking and the sound would come down—you would kind of listen to it.

Q What effect did it have? Was it annoying to you or was it not? A Oh, I would say yes, annoying.

Q How long did you hear it in operation? A Oh, maybe 15 minutes.

Q Then do you recall when the police officer came? A Yes.

Q Did you stay where you were or go over to the microphone? A I stayed where I was.

Q Then it stopped? A Yes.

Q Then did you notice—you said a man was speaking in front of a stand? A Yes.

Q Did you notice what he did after the amplifier was shut off? A Yes.

Q What did he do? A Walked over in front of the group that was sitting there.

Q Do you know whether or not he talked to them or what he did? A I don't know whether he was talking to them. We couldn't hear from where we was.

Mr. Noonan: You may ask.

Cross-examination by Mr. Himelfarb:

Q Mr. Moran, at the time this loudspeaker was in progress was there automobile traffic going through the park? A I suppose. I didn't pay no attention.

Q Was your back turned towards the road where the automobiles were going or were you facing it? A Well, I was facing west; the cars going west.

Q I am sorry, I am not acquainted with the park. Were you facing the road or was your back to the road? A My side was to the road.

Q Did you hear any sound of automobiles going through? A Not at the time.

Q Were you close enough to the road where you could hear automobiles going by? A I suppose.

Q About how far were you away from this road? A Oh, I would say about 100 feet or so.

Q You didn't hear this loudspeaker clearly? A Oh, not too clear.

412 Q Every so often you would hear a word? A Yes.

Q It wasn't clear enough for you to hear what was being said? A No.

Q Although you couldn't hear you were still annoyed? A I wasn't too annoyed; you know what I mean.

Q You were not peeved? A No.

Q It didn't disturb you too much? A No.

Q You did hear a word every so often? A Yes.

Q Were you angry about this loudspeaker?

413 A No.

Q Were you in disagreement with the topic of religion coming through the loudspeaker? A No.

Mr. Noonan: There is no evidence. I move to strike out there was any religion coming out of the loudspeaker. There is no proof on that yet.

The Court: It may be stricken out.

Mr. Himelfarb: May I have an exception, your Honor?

The Court: You may have an exception.

414

Q Do you know whether or not there was a religious discussion over the microphone? A No, I wouldn't know.

Q What was that? A No, I wouldn't know whether there was or not. All I heard was "The Lord" once in a while, heard that twice. Once again something come over about the 19th Amendment or something like that.

Q While this lecture was going on and the amplifier was in progress all you heard was "The Lord" twice? A Twice, yes.

Q And once something about the 19th Amendment? A That is what it sounded like to me.

Q That is about all you heard? A Yes.

Q And by using "The Lord" and "The 19th Amendment" it didn't offend you? A It did not.

Q Did you lodge a complaint with the police? A I did not.

Q It wasn't too annoying, was it? A No.

Q Could you keep on with your regular conversation? A Oh, yes I guess I could.

Q You talked about the same way you are talking now? A Sir?

Q About the same tone of voice you are talking now? A Yes.

Q It wasn't necessary to raise your voice on account of the loudspeaker? A No.

Q Did you ever hear any church bells rung in the City of Lockport? A I have.

Q Do they ring sometimes early in the morning? A They do.

Q Does that annoy you? A Well, it wakes me up in the morning for church.

Q Wakes you up, but it doesn't annoy you? A No.

Mr. Himelfarb: That is all.

Redirect examination by Mr. Noonan:

Q Mr. Moran, what was your purpose in going to Outwater? A Well, I didn't have anything to do at all. It was a good place to go up and sit down and relax and meet some friends.

Q It is a scenic point there? A It is.

Q Nice lawns, and are they kept up? A Yes.

Q Do they have benches? A Yes.

Q Tables? A Yes.

418 Q And did you go there for peace and repose on Sunday? A I did.

Q Of course, when you went there you didn't expect to hear any amplifiers? A No.

Q As to other people in the park there besides the people grouped, assembled in front of the microphone or amplifier, were there any other people scattered around the park? A A few by the rose garden. Outside of that you couldn't see up through the park on account of the trees.

Q Did you make any personal observation? A No. I come over and sit down—from the
419 street and sit down on the bench.

Mr. Noonan: That is all.

Recross-examination by Mr. Himelfarb:

Q You said there was a few people in the—what was that? A Rose garden.

Q How far was that away from the amplifier? A Maybe 50 feet—75 feet from where I was.

Q From where you were or the loudspeaker? A From where I was.

Q How far were they away from where the
420 loudspeaker was? A Maybe about 100 yards or so.

Q How many feet were you away from the loudspeaker? A About 100 yards—maybe 175.

Q Were you asked either by the Corporation Counsel or Police Department to appear in the park on the 22nd? A No, sir.

Q Did you lodge a complaint with the police? A I did not.

Mr. Himelfarb: That is all.

Mr. Noonan: That is all.

HARRY P. MORAN, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan:

Q Where do you live, Harry? A 315 Church Street.

Q And your occupation? A Machinist.

Q On Sunday, September 22nd, were you in Outwater Park with your brother and Mr. Van Wyck as has been testified to here? A Yes.

Q Were you seated with them as they testified? A Yes, I was sitting with them.

Q Did you hear any amplifier that afternoon? A Well, I did, yes.

Q About what time? A I would say ten after 4, something like that—4 o'clock.

Q How long did it continue? A 15 or 20 minutes.

Q 15 or 20 minutes? A Yes.

Q And was your group conversing at the time at the table or what were you doing? A Well, we were talking about different things.

Q Did you have any difficulty in hearing the amplifier, the words that came out? A It is hard for me to hear. I heard it a few times.

Q Do you have any defect in your hearing? A Well, I am a little hard of hearing at times.

Q A little hard at times. You did hear some words? A I did, yes.

Q And you were at the same distance away as the other witnesses that testified? A Yes.

Q That is about how far? A I would say about 175 to 200 yards, something like that.

Q Could you see, where the amplifier was located, whether there was any group in front of it or near it? A Yes, there was.

424 Q About how far in front of it were they or back of it wherever they were? A Well, I would say about, oh, 40 or 50 yards, something like that.

Q And did you see the amplifier when it was set up? A Yes, I did.

Q And were there any other people in the park besides the group around the amplifier? A Yes.

Q Would you say that the number of those equalled or exceeded the group? A I would say that it about doubled that.

Q What kind of a day was it? A Nice sun-
425 shiny day.

Q Any wind? A Yes, there was a wind, yes.

Q What effect had this noise from the amplifier on you sitting down having a conversation with these other men? A Well, it really didn't annoy me but just—

Q Did it disconcert you? A No. Just wondered why it was there.

Q You wondered why it was there? A Yes.

Q Why did you go to the park on Sunday? A Well, I generally go once in a while on Sunday, go up and walk around.

426 Q You go up there to walk around? A Yes; sit down.

Q Did you go there to enjoy the park? A Yes, go there to talk to somebody, talk and pass the day away.

Q Did you go there to enjoy the scenery? A Yes, I did.

Q Did you go there to enjoy the peace and repose of the park? A Yes.

Q Was the amplifier in your opinion something different? A It was the first time I had seen it. I was surprised to see it.

Q You had never seen one there before? A No.

Q In that area? A No.

Q You are subpoenaed here today? A Yes, I was subpoenaed.

Q You never saw me until this morning? A Never saw you until this morning.

Mr. Noonan: You may ask.

Cross-examination by Mr. Himelfarb:

Q Mr. Moran, was there a wind blowing through the park? A There was a wind.

Q Were the trees, the leaves on the trees making a noise? A No, I wouldn't say so.

Q But this loudspeaker on this automobile, was that moving around the park or standing still? A Standing still.

Q Did that prevent you from enjoying your day at the park? A No.

Q You enjoyed this park just the same as if it wasn't there? A I was surprised to see it.

Q Surprised it was there? A Yes.

Q It did not prevent you from enjoying your day in the park? A No.

Q Did you lodge a complaint with the police? A No, I didn't.

Q You had just as good a time in the park that Sunday afternoon as if the amplifier was not being used?

Mr. Noonan: I object to that as not proper cross examination. That is leading the witness and making him his own witness.

430 The Court: He may answer that. Read the question.

(Last question read by the Reporter.)

The Witness: Why, I would say yes.

Q Do you hear church bells being rung in the City of Lockport Sunday mornings? A I do.

Q Are they louder than this loudspeaker? A They are.

Mr. Himelfarb: That is all.

Mr. Noonan: That is all.

431 WALDEN SIDEBOTTOM, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan:

Q What is your address, Mr. Sidebottom? A 502 Prospect.

Q What is your business or occupation? A I work in Pies Furniture Store.

Q Now, on September 22nd last in the afternoon were you in Outwater Park? A I was.

Q Where were you with relation to the north
432 side of the park? A I was on the north side of the park west about 400 feet from where the speaker was.

Q I see. What did you go to the park for? A I went up there for peace and relaxation and for the scenery from the escarpment.

Q Were you seated overlooking the escarpment? A Yes.

Q Do you recall that afternoon if you heard an amplifier? A I did.

Q About what time was that? A It was around 4 o'clock.

Q Did it continue for some time? A Well, it did until the police arrived.

Q Was it a louder sound than was in the park in that area before it started operating? A Yes, it was a louder sound than was there.

Q Do you recall the nature of the words or program which came from it? A No, I don't.

Q But you heard it? A I did hear it.

Q What effect did it have on you? A It was annoying.

Q You went there as I gather for peace and repose? A Yes.

Q You were 400 feet away from this amplifier set up and you could hear it plainly out there? A I heard it off and on, yes.

Q Off and on? A Yes.

Q Did it rise and fall? A Yes.

Q It annoyed you? A Yes.

Mr. Noonan: You may ask.

Cross-examination by Mr. Himelfarb:

Q Could you, Mr. Sidebottom, could you hear any words that were being spoken through the loudspeaker? A Not distinctly.

Q Did you hear any of the words? A At times I could.

Q Do you or do you not know whether or not there was a religious sermon delivered over the microphone? A What I did hear of it at times I gathered that much from it that it was.

Q That it was a religious sermon coming through the microphone? A Yes.

Q Was that religious sermon contrary to your religious principles? A I am not here to testify to anybody's religion.

Q Was it contrary to your religious belief? A No, it wasn't.

436 Q Do you go to Outwater Park often? A I live right out there. I do go out once in a while on Sundays.

Q How far do you live from Outwater Park? You see, I am not acquainted with where it is. How many blocks would you say away? A I would say it was about a block and a half—close to two blocks.

Q Do you go there often Sundays? A I do off and on, yes, when I get the time.

Q About how many times would you say you go to Outwater Park? A About twice a month.

437 Q Do you know whether or not there is a baseball park in Outwater Park? A Yes.

Q Did you ever hear a broadcast from the baseball park? A Yes.

Q Were you in the park, in Outwater Park, when Rev. Myer was delivering a lecture in the baseball diamond several weeks ago?

Mr. Noonan: I object to this as having no bearing on the issues in this prosecution.

The Witness: I didn't hear it.

Mr. Himelfarb: He answered he didn't
438 hear it.

Q You could hear this loudspeaker but you couldn't hear it very distinctly, is that right? A Which one are you talking about?

Q The loudspeaker that was in Outwater Park on the 22nd? A Yes, I could hear it.

Q Could you hear it very distinctly? A I said it wasn't too distinct. You could hear it.

Q You couldn't hear the entire lecture coming over there? A I tried not to listen to it. I was talking, conversing with friends.

Q From what you did hear it was some sort of a religious lecture? A Yes.

Q Did it make you angry, this loudspeaker and the voice coming over it, did it make you angry? A No.

Q Did it get you peeved? A No.

Q Did it offend you? A No.

Q Did you carry on your regular conversation? A Yes.

Q With the people you were there with? A Yes.

Q Were you talking with your friends in Outwater Park in the same tone of voice you are talking now? A Yes.

Q You didn't raise your voice on account of this loudspeaker? A Well, as I said before I could hear it off and on when it did come up I would have to raise my voice.

Q Did you make a complaint to the police? A No, I didn't.

Q Did the Police ask you to come here? A I was asked if I would. I was subpoenaed to come here.

Q Who asked you? A Mr. Pittard.

Q Who is he?

The Court: The witness was subpoenaed to be here.

Q When did he ask you? That day in the park? A He asked me if it was annoying?

Q That same day? A Yes.

Q What did you tell him? A It was.

Q Now, Mr. Sidebottom, in the City of Lockport do you ever hear church bells rung? A Sure.

Q And they ring them every so often, don't they? A Yes.

Q Would you say the sound of the church bells, are they louder than this loudspeaker? A Well, as you said before they ring at six o'clock in the morning. I am not up then.

Q I am not asking you about six o'clock in the morning. I am asking you if you ever hear them? A Sure.

Q Are they louder than this loudspeaker? A Yes.

Q Do they annoy you? A Bells don't annoy me.

Q But the loudspeaker did? A Yes.

Q Did this loudspeaker annoy you because this lecture which was coming over the radio was contrary to your religious beliefs? A No, it didn't.

Q Do you believe every man has a right to his own belief and follow it? A That is right.

Mr. Himelfarb: That is all.

Redirect examination by Mr. Noonan:

Q There aren't any churches stationed in Outwater Park? A No.

Q Or any bells to your knowledge located in Outwater Park? A Not in Outwater Park.

Q And where the churches are located, are they in the residential or business areas of the city, these churches that have towers on them and bells in them? A St. Patrick's Church—

Q It is in the business section?

Mr. Himelfarb: I object to counsel leading the witness.

Q All right, now get this: Are these churches located in residential or business areas? A Located in both.

Q That is what I am getting at. None in the park? A No.

Q You went out to the park as I get it, to enjoy the peace and repose of the park? A That is right.

Q When you went there you didn't expect any amplifier, did you? A No, I didn't.

Q Did you want to listen to an amplifier when you went to the park? A I didn't go out there to hear an amplifier.

Q You went out to enjoy the park? A That is right.

Q Were there other people in the park besides the group around the amplifier? A Yes.

Q Did they exceed the group you saw around the amplifier? A Yes.

Q Were there more? I mean in numbers, twice as many, or once as many? A Twice as many.

Q There was twice as many? A Yes.

Mr. Noonan: That is all.

Recross-examination by Mr. Himelfarb:

Q How far were you away from the loudspeaker? A I would say about 400 feet.

Q About 400 feet? A Northwest.

Q You didn't lodge any complaint with the police about the loudspeaker? A No.

Mr. Himelfarb: That will be all, Thank you.

Mr. Noonan: That is all.

48 JAMES PITTARD, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan:

Q Are you a Special Officer employed by the Parks Department of Lockport? A I am.

Q And on Sunday 22nd, were you on duty at Outwater Park? A I was.

Q What time did you go on duty? A About 20 minutes after 12.

Q And you were there until what time?
49 A I was there until five minutes after 4—or 5.

Q Now, from the time you went on duty up until the time you went off duty, did you circulate around the park? A I did.

Q In what particular part of the park? A On the north side of Price Street in the, well, playground area and in the area where they meet and congregate around for quietness, down by the rose arbor and the lower picnic grounds. That is, down below the hill.

Q That is to the north? A That is to the north, yes.

50 Q Were there people in the park? A Yes.

Q And could you give us some idea about how many were in there about 4 o'clock in the afternoon? A Around 4 o'clock in the afternoon?

Q Yes. A I would say there was around 70—75 people at 4 o'clock in the afternoon.

Q And had there been more there that day? A Oh, yes, off and on. They come and go.

Q Is Sunday the busiest day or the dullest day? A Well, Sunday in the afternoon generally in good weather is a very big day.

Q Does it get heavier during some of the

months of the year than others? A That is right.

Q When is it heaviest? A Well, heaviest will start from May, June, July and August.

Q Does it depend on the weather? A Yes. When school starts up it seems to go down.

Q In this north area what attraction have you for the people? A We have fireplaces and benches and tables for them to carry on with their luncheon, private reunions, and so on, or for them to have the balance of the day to themselves—recreation.

Q Was there any unusual noise in the park that afternoon? A Yes, there was.

Q When did that occur? A That occurred at five minutes after 4. I was mystified when I heard it.

Q Do you know where that noise came from? A Yes. It came from the defendant's car, Mr. Saia.

Q Will you point out the defendant? A Right there (indicating).

Q That is the defendant? A That is him.

Q You saw him in a car? A That is right.

Q Did you see any amplifier on top of it? A I did.

Q Do you know what time he came to the park with the car? A Well, it was around five minutes to 4.

Q Where did he park in the park? A He parked alongside the northerly curb of Price Avenue.

Q Yes. A About, oh, in the center in the group arrangement of the tables and the picnics and what.

Q About how many feet is that from the

454 easterly edge of the park? A From the eastern edge?

Q Yes. A I would say about 250 to 300 feet.

Q You saw him when he came there? A I did.

Q Had you ever seen this defendant before? A Three times before.

Q In the three times before had the amplifier operated too? A That is right.

Q When he came there with this car, what kind of a car was it? A It was a blue—

Q Touring car?

455

Mr. Himelfarb: I object, if the Court please.

The Witness: Yes, it was a four-door, I believe.

Q Did you notice anything— A Studebaker.

Q Studebaker? A That is right. I couldn't think of it.

Q Was it the same car you had seen the defendant in before? A Absolutely.

Q On previous Sundays? A That is right.

456 Q Now, he parked his car you say on the north side of Price Avenue? A That is right.

Q Then what did he do next? What was done? A I noticed them assembling the horns.

Q Describe the horns? How many were there? A There were two and they get up on the running board of the car, I believe, and they screw them onto a fixture they have.

Q On top? A On top of the car. They were pointing northeast and northwest. Mostly north.

Q Mostly north? A That is right.

Q Was there anything else done? When they

fixed the horns on top of the car what else did you see them do? A Then I seen them string a wire out through the window.

Q Which window? A The right hand front window of the car, back beyond the—there was a car parked in back of him—just beyond that car in back they set the microphone up at the edge of the sidewalk and near a tree.

Q Was that point on park property? A Oh, yes, that microphone was.

Q Was it stationed on the grass or walk or where? A I believe there is a little mixture of grass and cinders there, we, whatever you want—

Q What I am getting at is whether it has a walk? A That is right.

Q Where the microphone was? A Yes.

Q When you saw this what distance were you away from the amplifier? A What distance I was away from the amplifier?

Q Yes. A I would say 175 to 200 feet.

Q East or west? A West.

Q Then did the amplifier start operating? A The amplifier started operating at five minutes after 4.

Q And in fixing these horns on top of the car was the defendant, did you notice, assisted by anyone else? A The defendant was sitting over amongst the group of people at first.

Q Then he came and sat in the car, I presume, to operate—

Mr. Himelfarb: I object to what he presumes.

Q He came and sat in his car? A They came and sat in his car.

460 Q He came? A He was sitting with the group of people.

Q Now, you say the amplifier started operating? A At five minutes after 4.

Q Was there anybody in front of this microphone? A Yes.

Q Who? A That gentleman right there (indicating), Mr. Reid.

Mr. Noonan: Is that your name? Walter Reid?

Mr. Reid: That is right.

461 Q You were pointing to Walter Reid. He was speaking into the microphone? A He was.

Q Did it continue for some time, the words that came out of this microphone? A Yes, 15 or 20 minutes. About 15 minutes to 20 minutes the words came out of it.

Q Was there any group near the microphone? A Yes.

Q About how many in that group? A I would say there was 20—25, possibly 20 to 25.

Q How far away were they from the microphone? A I would say 50 feet.

462 Q At one time were there other people scattered around in the park? A At that time besides this group?

Q That is right. A At that time besides this group there were 50 people, or 55, approximately, around the park.

Q In various parts of the park? A That is right.

Q You are referring to the north, north of Price Avenue? A That is right.

Q Now, did you see Mr. Goehle in the park? A I did.

Q And these witnesses that have testified here, Mr. Van Wyck, the two Morans and Mr. Sidebottom, did you see them in the park? A I did; I seen them sitting in the park.

Q After the amplifier was in operation did you circulate around the park? A I did.

Q And can you give us some idea of how far you could hear these words away from the amplifier? A Well, I would say 500 feet.

Q Hear them distinctly? A You could hear them, yes, and northeast I would say 500 feet. And I was down in the lower picnic grounds. There was twelve people from Buffalo having luncheon in there, a little picnic.

Q Yes. A I was talking to them. They said—

Mr. Himelfarb: Are they in Court?

Mr. Noonan: No.

Mr. Himelfarb: I object to what he said.

Mr. Noonan: You can say you had a talk. That is as far as you can go.

The Witness: I had a talk with those people.

Q While the amplifier was in operation were any complaints made to you? A Any complaints made?

Q Yes. A Yes, there was.

Q More than one? A Yes.

Q I see. Previous to this occasion as a Special Officer in line of your duty had you heard complaints about the use of amplifiers there? A Plenty.

Mr. Himelfarb: I object to that and move to strike it out. We are confining this to

466 September 15th and 22nd. Any complaints previous to that I move to strike out.

The Court: Yes, that will be stricken out. Let counsel re-frame his question.

Q On the 15th? A Oh, yes, I had complaints.

Q Did you have a talk with Superintendent Goehle? A I did.

Q After your conversation with him did you approach the amplifier and microphone? A After I had called the police I had the conversation with Mr. Goehle. I called the police first.

467 Q Before you talked to the police did you go over to the machine, the amplifier? A Oh, yes.

Q While it was broadcasting? A That is right.

Q Did you have a talk with somebody there? A Yes.

Q Who did you talk with? A With the defendant.

Q With the defendant? A Yes.

Q What did you say to the defendant? A I asked him if he had a permit and he pulled out that brown—he has a brown card I believe in a

468 cellophane carrier. Then he had a book. He said, "This is my permit." I said, "You know that isn't the permit you are supposed to have up here. Haven't you got any other?" He said, "Now, wait a minute." He was going to read something to me. I said, "Shut it off." He was going to read to me. He wouldn't shut it off. I said I was going to call the police.

Q You called the police? A That is right.

Q You had conversations with him before? A Yes, the other times.

Q You know him? A That is right.

Q You called up the police? A That is right.

Q Did the police come? A That's right.

Q During the time you requested him to shut off the amplifier where was he located? A Sitting in the car.

Q This amplifier arrangement, where is it? A It sits to the right of him in the car, of the driver.

Q Some kind of a box? A It is a box; it has buttons on it.

Q Buttons and things on it? A Yes.

Q The horns are on top? A The horns are on top and the wire runs up through the outside to the horns, a little wire.

Q Now, that was on the 22nd? A That was on the 22nd.

Q On September 15th, were you on duty that Sunday afternoon in the park? That is a week ago last Sunday? A No, I wasn't.

Q Did you go to the park that afternoon? A I did.

Q I am referring to Outwater Park? A That is right.

Q In the afternoon of that day did you see this same defendant? A I did.

Q Where was he at that time? A He was in his car.

Q Did it have an amplifier on top of it? A It did.

Q Was there a microphone in front of it? A Yes, there was a microphone out on the walk.

Q Was there a group gathered in front then?

Mr. Himelfarb: I object to counsel leading the witness. I stood here for a

472 couple of minutes and let him lead. Let him testify. I object to counsel leading.

The Court: Objection sustained.

Mr. Noonan: I am not trying to lead.

Mr. Himelfarb: It sounds that way. That is my interpretation of leading.

Q You are the man that has to testify; not me. You were there? A That's right.

Q You tell me what you observed around 4 or 4:15 or whatever time it was? A It was on—

Q A week ago Sunday? A Why there were practically—they were in the same place as they
473 were on the 22nd.

Q Yes. A And I observed that there was—or the 15th was the first time the group ever came up and didn't put back their benches.

Q Yes. A They left the benches assembled in one spot.

Mr. Himelfarb: I object to any conversation about benches. He is not charged with leaving benches in the park. I move to strike it out.

The Court: Strike it out.

474 Q Getting back to 4 o'clock or whatever time it was on the 15th, you saw the defendant? A That is right.

Q You were off duty at the time? A That is right.

Q You went through the park? A I did.

The Court: Tell us what happened.

Q Tell us what happened. A Why, I drove through the park and I heard an amplifier going. I drove right up behind slow and I seen the defendant in the same car operating and I went up

to the westerly end and Mrs. Whalen was in charge. I had a week off, you see. I went up to the westerly end and I got out and I went over to her and she said to me, she said, "I am glad you came." "Well," I says, "I am glad I did too." She said, "They are operating that loudspeaker down there. I have got to go down and call up."

Mr. Himelfarb: Is Mrs. Whalen in Court?

The Witness: No.

Mr. Himelfarb: I move to strike out any conversation with Mrs. Whalen.

The Court: Strike it out.

Q I don't think it is much anyhow. You had a conversation? A I had a conversation. Then I turned around to come back to the other side.

Q You went up Price Avenue to the end? A Not to the end; up to the horseshoe court by the wading pool.

Q That is how far? A Oh, that is about 550 feet away.

Q 550 feet away, east or west? A West.

Q You got out? A Yes.

Q Could you hear the amplifier up there? A I could.

Q Could you hear it distinctly? A Not too plain.

Q Were you in back of it then or in front of it? A I would say I was kind of on the side.

Q In front or back? A I was on the same side the amplifier was on on the street, on the north side. I was at the westerly end of it.

Q You heard it there? A That's right.

Q And did you have any difficulty in hearing it? A No, I didn't, as far as hearing.

Q Now, then, what did you do? A Then I

478 got in my car and I drove down Price Avenue and went up to the police station and reported the amplifier was going out to the park and then I went home.

Q Then you went home. Do you recall who was speaking from the microphone, if anyone was speaking on the 15th, what gentleman it was? A Well, he is not in here.

Q You don't see him in the audience? A No.

Mr. Noonan: You may ask.

Cross-examination by Mr. Himelfarb:

479 Q While this loudspeaker was in progress you were walking around the park? A That is right.

Q You heard this loudspeaker? A That is right.

Q At times you heard it distinctly and other times you didn't hear it distinctly? A Yes.

Q Do you or do you not know whether there was a religious discourse going through it? A A religious discourse going through there.

Q Do you remember any part of it? A No. I heard "God" mentioned and I heard "the dust off His feet." I couldn't quote the chapter.

480 Q From what you did hear you know it was a religious lecture? A That is what I took it to be.

Q You said you heard some complaints. Who were the ones that lodged complaints? A Who are the ones that lodged complaints?

Q Yes. A I don't know their names.

Q Have you got them in Court? A Oh, no.

Q Did you go around the park to ask anyone about this whether or not it was annoying? A I didn't go around.

Q I am asking you. Yes or no? A No.

Q Did you ask anybody in the park whether they were annoyed by anybody? A Did I ask anybody?

Q In the park whether they were annoyed by this loudspeaker? A No; they told me.

Q Did the loudspeaker annoy you? A Well, it mystified me.

Q I am not asking you whether it mystified you. I move to strike that out.

The Court: Strike it out. Answer the question he asked.

The Witness: Uuder the circumstances it annoyed me, yes.

Q What do you mean by "under the circumstances"? It either annoyed you or it didn't annoy you? A It annoyed me, yes.

Q These people complained about this loudspeaker but none of them are in Court? A That complained about the loudspeaker?

Q Yes. A None of them that really complained.

Q None that complained are in Court today? A No.

Q Have you the names and addresses of those that complained? A No, I haven't.

Q Let us confine ourselves to the 22nd. You know a loudspeaker was being used on the 8th. The people that complained on the 22nd, why didn't you take their names and addresses? A Because I didn't think it was necessary for me to take their names and addresses.

Q Didn't you think it was necessary to have them appear as witnesses? A No, I didn't, because there wasn't a law being broken to my estimation.

84 Q You are a Police Officer? A Special Officer.

Q Before you can convict any man of breaking the law, do you or do you not know there must be witnesses confronting the accused?

Mr. Noonan: I object to that as not a proper question.

The Court: Objection sustained.

Mr. Noonan: He knows that.

Mr. Himelfarb: I don't know whether he knows or not. He is a Police Officer.

85 He ought to know it.

Q Are you authorized to make arrests in the park there? A Yes.

Q Did you ever make an arrest there? A I have.

Q For violations committed in the park? A On different violations.

Q When a violation is committed do you get the names of witnesses? A Well, no.

Q You never do? A No.

Q You have been in the Police Department

86 how long? A Eight years.

Q In that length of time you never made it your business to get the names of witnesses to any violation of the law? A Well, I never—

Q Answer yes or no. A No, I haven't.

Q Now, these gentlemen that just appeared on the stand and testified, I believe their names are Ward, Goehle, Van Wyck, Moran and Sidebottom. Did they complain to you about the loudspeaker? A Did they complain to me?

Q Did they? A They said, "Are they up here again?"

Q Did they complain to you? A That is a complaint. They said, "Are they up here again?"

Q They just asked you a question? A If you want to put it that way, yes.

Q You heard them testify when they were on the stand? A Yes, sir.

Q Did you hear them? A Yes.

Q Did you hear them say none of them complained to the Police Department about the loudspeaker? A That is right; that is right.

Q Now, this lecture that was being delivered, this religious lecture, over the loudspeaker, is that contrary to your religious principles? A Oh, no.

Q Do you believe every man has a perfect right to worship Almighty God as he pleases? A Why, certainly.

Q Do you hear on Sunday mornings, do you hear the loud church bells throughout the city being rung? A Yes.

Q Does that annoy you? A No, it don't annoy me.

Q Those church bells, are they louder than the loudspeaker being used in Outwater Park? A I wouldn't say to my ears they are not.

Q You say the church bells are not louder? A Not louder than that speaker was to me in Outwater Park.

Q How far would you say ~~you could hear~~ that loudspeaker? A Oh, I would say a radius of 500 feet. There has been other times you could hear it further than that.

Q How many city blocks would you say 500 feet is? A I don't know.

Q Of Lockport? A I wouldn't say. 500 feet would be, I don't believe it would be a small block.

Q That is my interpretation of it. You could

90 hear that within a radius of a small block of the City of Lockport? A A short block.

Q Could you hear that discourse two blocks away? A You could hear it mostly, yes.

Q In the City of Lockport? A Yes, you could hear it mostly.

Q Do you know how many blocks you can hear a church bell? A I wouldn't know that.

Q Can you hear it three blocks away?

Mr. Noonan: I object to this line of questioning, if the Court please.

91 The Court: There is no testimony about any church bells or anything else. Objection sustained.

Mr. Himelfarb: If your Honor please—

The Court: It may be stricken out.

Mr. Himelfarb: May I be heard, your Honor? I am trying to bring out a question here, due to the fact my clients belong to a certain religious sect or group, that church bells, when you can hear them at five or six o'clock in the morning being rung from one end of the city to the other,

92 but they were annoyed by this particular lecture. That is what I am trying to bring out. I think I have a right to.

The Court: Church bells have been rung since the Revolution.

Mr. Himelfarb: I hope they will be allowed to ring in this country as long as this country exists.

The Court: That is right. There is no connection between these church bells and the microphone.

Mr. Himelfarb: The connection between

church bells and the microphone is this connection: the church bells don't annoy him; this loudspeaker, it annoyed him because they were of a different religious sect.

The Court: To some people church bells are very pleasing.

Mr. Himelfarb: I don't remember him testifying to that, your Honor. The Court is not testifying. I would like to bring that out.

The Court: You asked me for my opinion. I don't think there is any connection between church bells and a loudspeaker. I don't think it should be brought in.

Mr. Himelfarb: Am I disallowed to bring that in?

The Court: Yes.

Mr. Himelfarb: May I have an exception?

The Court: You may have an exception.

Q Now, do you or do you not know whether anyone lodged any written complaint with the police for the use of this loudspeaker, I mean the loudspeaker used on the 15th and 22nd? A No.

Q You don't know of any? A No.

Q While this lecture was going on was there any disturbance in the presence of this loudspeaker, was there any breach of the peace, any commotion? A No.

Q It was being delivered in an orderly fashion? A Oh, yes.

Q There wasn't any commotion, any fighting in the course of this lecture? A That is on the 22nd?

96 Q I am confining myself to the 15th and 22nd? A No, there wasn't.

Q There wasn't anyone who appeared to walk up while this lecture was being given giving them an argument that it shouldn't be given outside of the Police Department?

Mr. Noonan: I object to this. This man is charged with a violation of Sections 2 and 3 of this Ordinance and we don't charge that, we don't claim that. He is going far afield.

Mr. Himelfarb: It is important, your Honor, whether there were any complaints
97 and whether it was being done in an orderly way or a disorderly way. That is what I am trying to bring out.

The Court: Objection sustained.

(Discussion off the record.)

Mr. Himelfarb: I am confining myself to what he saw.

Mr. Noonan: O.K. Ask the witness that.

Q While this lecture was going on, this religious discourse through the microphone, was there any disturbance of outsiders objection to
98 this lecture at the place where the lecture was being given? A No, not at the place.

Q Was there any breach of the peace outside of the lecture? By breach of peace I mean people there giving arguments why— A No, nobody there.

Q It was being done in an orderly manner? A Oh, yes.

Q With no commotion whatsoever by the people on the outside or around the park? A That is right.

Mr. Noonan: I object to that question on

an orderly manner. That is a question for the Court.

Mr. Himelfarb: I think he has a perfect right to say whether it was orderly or noisy.

Mr. Noonan: He can say whether there was noise or commotion. Whether it was orderly and legal, that is a question for the Court.

Mr. Himelfarb: I didn't ask whether it was legal. Any person of ordinary sense knows whether a meeting is orderly or disorderly. I am not asking him whether it was done legally. I didn't say that.

The Court: Can you re-phrase the question? Read the question, Mr. Nevins.

(The last question read by the Reporter.)

The Court: You mean the people at the meeting or the people in the park, inside the park? Qualify that.

Q There wasn't any commotion or any disorder by the people in the park objecting to this lecture? A In the whole park?

Q Yes. A Yes, there was.

Q By commotion, let us say for the sake of argument here is the place the lecture is being given? A That is right.

Q There is your microphone (indicating). A That is right.

Q Were there any people in the vicinity of the park coming up to that lecture and objecting to the lecture being given? A Oh, no.

Q Therefore, that lecture was being given in an orderly manner. By that I mean there wasn't any noise or disturbance by the outsiders? A That is right, by the outsiders.

Q There wasn't any fight? A No; that is right.

Q No person there, while this lecture was being given, objected to that lecture? A No.

Q Were there any automobiles going through the park on this roadway? A Yes, there was.

Q Was there much traffic or not? A It wasn't heavy. It is coming and going.

Q Would you say the traffic is heavier on Sunday? A Not the afternoon on Sunday the traffic isn't.

Q And the weather on the 22nd? A It was good weather but off-season.

Q How about the 15th? I mean the 15th of September? A That was a nice day.

Q Did they have more people in the park then or less for that time of year? A 100 on the 15th.

Q What other people in the park would that include? Those listening to the lecture? A No.

Q Outside the vicinity of the lecture more or less? A That is the 15th?

Q Yes. How many were there on the 22nd outside of the people listening to the lecture? A Outside of those people?

Q Yes. A I would say there was 50 or 55.

Q On the 15th, 100 and on the 22nd, 50 or 55? A That is right.

Q Of the 100 people on the 15th and the 50 or 55 on the 22nd, as you refer to these people, including those listening to the lecture, did those people move toward the lecture and object to it being given? A No, they didn't, not that I recall.

Mr. Himelfarb: That is all.

Redirect examination by Mr. Noonan:

Q As I understood you on direct examination they complained to you? A Yes, to me.

Q About the noise?

Mr. Himelfarb: He didn't take their names either.

Q They did complain? A Yes, they complained.

Q More than one? A Yes.

Q Now, Mr. Pittard, how long have you worked for the Parks Department? A Eight years.

Q During that time in that particular section have you ever heard an amplifier used? A Never.

Q Never seen one out in that area? A Outside of the people that used it?

Q Outside of these people, you mean the defendants, do you? A I mean—they have one man up there.

Q At some other time. This group? Outside of that group, in your experience as a police officer for the City of Lockport, have you ever heard an amplifier used or seen one used in that north side of the park? A No, I haven't.

Mr. Noonan: That is all.

Recross-examination by Mr. Himelfarb:

Q This was stationary? It wasn't moving around? It was resting on the top of the automobile and that automobile was not circulating through the park? A It was standing.

Redirect examination by Mr. Noonan:

Q When you gave the testimony of 500 feet you heard it on either side, do you wish to confine yourself to the fact it could only broadcast 500 feet? Did you go off some other distance or did you restrict yourself to 500 feet? A It could go farther than 500.

Q You didn't go over 500? A That is right; not myself.

Mr. Noonan: That is all.

Mr. Himelfarb: No further questions.

GEORGE GARDNER, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan:

Q You have been a Police Officer for the City of Lockport for how many years? A 23.

Q On Sunday, September 22nd last, in the afternoon did you go to Outwater Park? A I did.

Q Were you directed to go there by your superior? A Yes, sir.

Q You left the Police Headquarters here, did you? A Myself and Officer Sheehan.

Q In a Police car? A Yes.

Q And the Desk Sergeant in charge here told you the purpose of your going? A Yes.

Q What did he tell you? A He said they were using a microphone and loudspeaker up in Outwater Park.

Q And did you go there? A Two go there.

Q I see. You got to the park about what time?

A I would say about 4:18—4:20, along in about that. It wasn't any longer than that.

Q That is, to where the loudspeaker was? A Yes, sir.

Q Before getting to that point, had you made any stops on the way? A Had we made any stop on the way?

Q Yes. A No.

Q Was there any time you made a stop near the ball park? A We stopped in Outwater Park about, oh, I would say roughly 200 feet from where the loudspeaker was. Our idea was in stopping to see whether the loudspeaker was in operation.

Q Was that east or west of where the loudspeaker was? A That was west of where the loudspeaker was.

Q You did stop there? A Yes. Officer Sheehan shoved his head out of the window and I out the other. He said, "Yes, it is working."

Q Could you hear it? A Yes, we could hear the noise—couldn't hear what it was with our car running.

Q Did you get out or not? A Not until we drove down to where the loudspeaker was.

Q That you say was 200 feet away? A Yes, sir.

Q You went over to where the loudspeaker was. Did you see the defendant there? A Yes, this gentleman here (indicating).

Q Where was he with relation to the loudspeaker? A He was in the car.

Q Was the loudspeaker on top of it? A There was two horns on top of it.

Q There was two horns on top of it. Where was he seated in the car? A In the driver's seat.

514 Q The car I refer to has horns on it? A Yes, sir.

Q Was he on the left or right side? A He was on the left side. His car facing the west. That would be the driver's side.

Q And was the amplifier going, the loudspeaker I mean? A Yes, the machine was running.

Q Could you hear it distinctly? A Well, I couldn't. I could hear it distinctly. I couldn't tell what it was saying.

Q Did you pay any particular attention to
515 what it was saying? A No, I didn't. I knew it hadn't ought to be there according to the City Ordinance.

Q You knew there was a City Ordinance prohibiting it? A Yes.

Q Did you see any man there speaking to any people? A Later I did but not then.

Q Not then? A Not then.

Q At that time or later on did you see a microphone or a wire to a microphone? A Yes. The microphone sat at the rear of the car with a long wire on it. The wire was run, stretched out 15
516 or 18 feet, not exceeding 20 feet.

Q At that point was there a microphone? A Yes, there was a microphone at the end of the wire.

Q Was there a man standing there? A Not when I got to the microphone, no.

Q When you first got to the car where the defendant was did you make any observation as to the microphone, as to the crowd assembled there? A I observed a crowd of 18 or 20 people, not exceeding 25 at the most. They were seated north of the car.

Q On the north side of the car? A Price Street there.

Q In the park? A In the park.

Q The northerly side of the park? A Yes, sir.

Q As you drove down from where you stopped 200 feet away did you see this crowd? A As I got to it, yes.

Q Did you see anybody addressing them, speaking to them? A Not at that time. I did later.

Q You did later, I see. When you got up to the amplifier it was in operation? A Yes, the automobile with the—well, I don't know what you call it, the machine inside that runs it.

Q It was in operation? A Yes.

Q You could hear noises coming from it? A Yes, sir.

Q What direction were the horns facing? A One was facing toward the northeast and the other one to the southwest, tilted.

Q Tell what you did if anything towards the defendant, Mr. Saia? A I got out of my car and I asked him if he had a permit. He didn't answer me. I said, "Get out of that car." He got out of the car. "Let's see your permit?" He said, "Here is my permit." He brought out a case with a cellophane cover on it.

Q Yes. A I said, "That is not a permit. That is no good. You are under arrest." So I asked Officer Sheehan to put him in the car.

Q Did you ask him to shut off the microphone? A Yes, I did. He didn't. He didn't let on he heard me.

Q He was out of the car then? A Yes. When he was in the car I asked him to shut it off.

Q When he got out of the car— A I told him he was under arrest.

Q Did you shut it off? A Yes, sir.

Q How did you shut it off? A Like a switch button on a light, you just pushed it up.

Q Did you ask the man if he owned the car, whether it was his car? A I found that out after we got to the station. We got hold of his license.

Q You saw his operator's license? A And car license.

Q Did it show him owner of it according to the New York State License? A Yes, sir.

Q You are sure of that? A Yes.

Q Did you make any observations as to any other people in the car that afternoon? A Well, when we drove in the park there were roughly 50 or 60 people.

Q Other than this group? A Other than this group.

Q They were scattered around the park, not in one place? A Scattered at the horseshoe course and other parts of it.

Q Was it a nice sunny day? A A peach—grand, too nice to work.

Q Before you got him to the station what was done if anything about the microphone and wire? A After I shut the machine off I went and disconnected—I had to disconnect the microphone. Then I rolled up the wire and carefully put the microphone in the car. I commanded Officer Pittard to drive the car to Police Headquarters. After he did we locked the car up securely.

Q At Police Headquarters? A At the side of the Police Station.

Q Did you go back to the park that afternoon? A I took Officer Pittard back. When we got back

there was a man talking to this group of people.

Q Over what? A Nothing. We had it.

Q Can you recognize this man in the Courtroom? A No, I couldn't. I was driving the car. On the way back I sat the side. I didn't know the gentleman at all.

Q Was this sound coming out of the amplifier louder than the ordinary tone of voice— A I would say yes.

Q —than the ordinary speaker who wouldn't be using a loudspeaker? A I drove up to the park that day and I couldn't hear anybody talking. I drove in the park and we stopped 200 feet from there and to be sure the machine was running. We could hear the loudspeaker.

Mr. Noonan: You may ask.

Cross-examination by Mr. Himelfarb:

Q Officer Gardener, you drove up from the Police Station into Outwater Park and you stopped 200 feet from where the lecture was being given over the loudspeaker? A That is right.

Q Did you step out of your car? A No; we put our heads out.

Q There was a time you got out of the car? A Was there a time?

Q Yes. A Not until I got up to where the loudspeaker was.

Q You got out of your car to walk up to the loudspeaker? A My good man, I wasn't any farther than you and I are.

Q You got out of your car and walked— A Three or four steps, yes.

Q Could you hear what was being spoken over the loudspeaker as you got closer? A Yes; there was noise. What it was I couldn't say.

Q Can you hear good? A Yes.

Q You couldn't hear it until you got on top of the loudspeaker? A Yes.

Q As you kept getting closer to the loudspeaker could you hear what was being spoken about? A Something of a religious nature. I couldn't say what it was.

Q You would say it was a religious lecture? A Yes, I would.

Q A discourse was being given on religion? A As far as I could understand.

Q There was a time you could hear it? As you kept coming closer the more distinct it got? A Yes.

Q You said this man showed you a card showing his authority. Is this the card he showed you? A No, it was not. He had a celluloid case.

Q Take a look at it. If the celluloid case was taken off that, was that the card? A That I couldn't say.

Q Did you read the card? A No, sir; it was not our permit.

Q I am not asking you about your permit. It was something similar to this? A Yes, sir.

Q It had a celluloid or cellophane cover on top of it? A Celluloid front, yes.

Q How long did you remain in the park? A Just long enough to pick up the apparatus and put it in his car.

Q Did anyone in the park complain about this lecture while you were there to you? A No, sir.

Q Do you or do you not know whether anyone complained about this lecture or loudspeaker to the Police Department? A That I couldn't answer. I was acting under my superior.

Q I am asking you what you know? A No; I said no.

Q Was this lecture being given in an orderly manner? A As much as I could see, yes.

Q By that I mean there wasn't any commotion or any arguments or any fights in the vicinity of the lecture? A No, sir.

Q There wasn't any people in the park giving this lecturer any argument about this lecture? A Not to me.

Q You didn't see anything of that sort? A No, sir.

Q As far as you know when you got 200 feet away from the lecture and slowly came up there, that lecture was being given in an orderly manner? A Yes, sir.

Q And while you were in the park that day no one complained to you about this loudspeaker? A No, sir.

Q Or the lecture? A I was only in the park about five minutes at the most.

Q Did this lecture disturb you? A Not me.

Q Did it annoy you? A Not me.

Q Do you believe a person has a perfect right to worship his God as he sees fit? A That is right.

Q That is a privilege which everyone in the United States has? A That is right.

Q Did you ever hear church bells being rung in the City of Lockport? A Sure.

Q And would you say the sound of those church bells are louder than the lecture over this microphone or loudspeaker? A Yes.

Q Much louder? A You can hear church bells sometimes for miles.

Q That is right. Has anyone ever lodged a complaint as far as you know, your knowledge is concerned about the ringing of church bells? A Not that I know of, no, sir.

532 Q And when you told Mr. Saia to come along to the Police Station with you he went away with you in an orderly manner? A Yes, sir.

Q There was no commotion when you made this arrest? A No.

Mr. Himelfarb: No.

Redirect examination by Mr. Noonan:

Q You went to the park in the performance of your duty? A That is right.

Q You knew there was an Ordinance affecting the use of a loudspeaker? A Yes, sir.

533 Q You knew this man when you saw him over there? You had trouble before? A He had been in here before. I had seen him at the jail different times a week previous to that and two weeks previous to that.

Q That is right. A I knew the man; I recognized the man's face.

Mr. Himelfarb: Any conversation that the Corporation Counsel had here in reference to the man, meaning the defendant, previous to the 15th and 22nd, I move to
534 have it stricken out. It has nothing to do with this case here.

Mr. Noonan: It is just to show he recognizes him.

The Court: Strike it out.

Mr. Himelfarb: Thank you.

Q Your purpose in going to the park was in your official duty, being sent there? A That is right.

Q To see if there was violation of an ordinance? A That is right.

Q That is all you did? You were not looking for sounds or annoying things? You merely went there in performance of your duty? A That is right.

Mr. Noonan: That is all.

Recross examination by Mr. Himelfarb:

Q If there had been a disturbance from where you were you would have seen it? A I would say yes.

Mr. Himelfarb: That is all.
Mr. Noonan: That is all.

FRANCIS P. SHEEHAN, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan:

Q You are an Officer of the City of Lockport? A I am.

Q And on Sunday, September 22nd, did you accompany Officer Gardner to Outwater Park? A I did.

Q Were you present, when the defendant, Mr. Saia, was arrested? A I was.

Q You heard his testimony about both of you being sent there? A That is right.

Q That is true, is it? A That is true.

Q Before getting to where the amplifier was, did you stop the car at any particular point? A We did.

Q About how far away from where the amplifier was? A Oh, around 200 foot.

Q East or west? A West of the amplifier.

538 Q Could you hear any sounds at that time? A I heard sounds of a person talking—sounds coming out of the amplifier. One word more distinct was "God".

Q At that time was the motor of your car running? A It was.

Q You shoved your head out the door? A Not completely out.

Q Partly out, I see. That point is west. Is it back of the north side of Price Avenue where the amplifier is or is it on the same side? A It is on the south side of the street.

539 Q Is Price Avenue divided by an island in the center of it? A Yes, sir, it is.

Q It has two lanes? A That is right.

Q You were going down the north lane? A We were going down the north lane.

Q Where the amplifier was, was that on the north side or south side of Price Avenue? A On the north lane.

Q Did your car proceed to where the amplifier was being used? A That is true.

Q Where did you stop your car? A Right alongside the defendant's car.

540 Q What happened then? A Well, Gardner got out of the car and I got out.

Q Who was driving? A Officer Gardner. And he asked the defendant for his permit and he was reluctant to say anything. He just sat for a minute. Then he did, after two minutes, he got out of his car and reached in his pocket and he pulled out this celluloid container. It had a card in it. Officer Gardner said, "We are not interested in that. We want to see your permit." And he started to tell us about this celluloid card. With that Officer Gardner told him he was under arrest and we put him in the car.

Q Do you recall Officer Gardner asking him to shut off the amplifier? A I do.

Q Previous to that? A I do.

Q Did he shut it off? A No, he didn't.

Q Did Officer Gardner do something? A Officer Gardner reached in and shut it off himself.

Q How did he shut it off? With a switch or something? A Pressed a button on the panel like he said.

Q What part of the car? Right front or the rear front? A Which is that?

Q Where this button was? A On the side of the apparatus nearest the driver; near where the defendant was sitting.

Q Near the front of the car? A The apparatus was at the center of the car.

Q Built in the dashboard? A Sitting on the seat.

Q It was sitting on the seat? A That is right.

Q Did you notice while you were there if any wires ran from this machine there, this automobile and amplifier out into the park? A I did.

Q Was there a wire? A There was around 20 foot long.

Q What was at the end of it? A There was a stand with a microphone at the top and a man standing there talking in the microphone.

Q And did you notice any people assembled there? A There were probably 25 people in a group about 50 feet north of this microphone.

Q Was there a gentleman speaking to them over the microphone? A There was a gentleman speaking. I could see him speaking through the microphone. I assume he was speaking into the microphone, when I stopped 200 feet west of the car.

544 Q About how many were in that group in front of the speaker? A I would say about 25; 20 to25 people.

Q Did you make any observations as you drove in the park whether there were any other people in the park? A I did.

Q How many people would you say? Give an estimate of what you saw in the park? A I estimated the number of people at 45 or 55 people other than this group.

Q All in one place or scattered? A At the horseshoe court and swings and they have a bell
545 up there. Used to have it as—

Q The old fire alarm? A Yes.

Q That is a monument? A Yes.

Q Does that bell ring any more up there? A I am afraid not.

Q Was this the only amplifier going in the park? A The only amplifier I could see in the park.

Q Could you hear any other amplifiers in the park? A No, sir.

Q Was the volume or sound coming out of the amplifier large or small? A Well, it was more
546 than the ordinary tone of voice—any human voice.

Q How were the horns on this car faced? A I thought—in my recollection they were both northeasterly.

Q Into the north section of the park? A That is right.

Q Now, Officer Gardner you say told the defendant he was under arrest? A That is true.

Q And you took him along in your car? A That is right.

Q And the car with the amplifier was driven

by Officer Pittard, is that correct? A That is right.

Q To Police Headquarters? A That is right.

Q Do you recognize in this room the man who was speaking through the microphone? A This gentleman on the end with the glasses (indicating).

Q You refer to Walter Reid? A Yes. I never been acquainted with the gentleman. That is the gentleman?

Q Was there a time that afternoon after going to Pclice Headquarters you returned to the park? A No; I stayed at headquarters.

Mr. Noonan: You may ask.

Cross-examination by Mr. Himelfarb:

Q Mr. Sheehan, Officer Sheehan, there came a time you were approaching the park with your automobile? A That is true.

Q There came a time as you were getting closer and closer to the speaker giving some discourse or lecture through a loudspeaker? A That is true.

Q And could you immediately hear what was going on as you approached the park, the discourse or lecture? A You mean from the time we—after we stopped and started up and approached the loudspeaker?

Q Yes. A You wanted to know if I could hear?

Q Yes. A I wasn't interested.

Q Could you hear? A I heard it.

Q Did there come a time when you got closer and closer to the microphone or loudspeaker? A Repeat that other question.

Q Was there a time when you got closer and

550 closer to the microphone? A Didn't you just ask me that question?

Q No, I didn't. A I misunderstood you. May I have it repeated?

Q Was there a time you came closer and closer? A There was.

Q There was a time you got right next to the automobile containing, having this loudspeaker? A That is right.

Q When you got as close as that could you hear the substance being spoken over the loudspeaker? A No, sir, I wasn't interested.

551 Q You didn't hear anything? A I didn't pay any attention to it. I didn't hear a thing.

Q Did you or did you not know there was a religious lecture being given? A Assuming from the word I heard "God" I imagine there was.

Q Is that the only word you heard was "God" from the time you got out of your car and you walked up to the lecture? A The only word pertaining to religion that I heard.

Q How long did it take? How far did you stop your car to where this amplifier was or loud-
552 speaker in feet? A I would say three foot alongside it.

Q You got out and you walked up that three feet to the other car? A We were broadside with their car.

Q You drove right up next to it? A Yes.

Q The only thing you heard from the time you got from the outside of the park until you got next to this car was the word "God"? A Some other word. I can't remember what that was. I do recall "God".

Q I don't expect you to remember the exact

words. Would you say from what you heard it was a religious lecture? A Yes.

Q Could you describe this car? A I can.

Q What kind of a car was it? A It is a blue —I don't know the year—blue Studebaker 4-door sedan. The right rear hub cap has a Chevrolet cap on it.

Q Was there any disturbance while this lecture was being given while you were there? A None whatever.

Q It was given in a peaceful manner? A It was.

Q Were there any people in the vicinity where this lecture was being given that were complaining about this lecture? A No, sir.

Q Do you know whether or not any individuals have complained to the Police Department about this lecture? A I do not.

Q Do you or do you not know whether any individuals complained to the Police Department about the use of this loudspeaker? A I do not.

Q Was the sound coming out of the loudspeaker, was that annoying to you? A I wasn't there long enough for it to be annoying.

Q While you were there did it annoy you? A No.

Q Did it make you angry or peeved or didn't it annoy you? A Not a bit.

Q In the City of Lockport on Sunday morning do you hear church bells being rung? A I do.

Q And at various other times during the day besides Sundays church bells are being rung? A Yes, sir.

Q And would you say the noise coming out of this loudspeaker was as loud as these church bells? A No.

556 Q These church bells are much more louder than the sound coming out of the loudspeaker? A That is true.

Q And did the defendant here offer any resistance when you told him he was under arrest? A None whatever.

Q He went along with you in an orderly manner? A That is right.

Q You were merely performing your duty as an Officer? You were told to go to Outwater Park, somebody was using a loudspeaker? A That is right.

557 Q Personally you have no grudge against these members of the Watchtower Bible & Tract Society? A I have one.

Q You do? A They approached my home several times and annoyed my wife. You asked me; I told you.

Q I am asking you, sure. Then you are sort of peeved against this Watchtower organization, aren't you? A No. I want them to stay away from my home. I practice my religion. What I practice is—

558 Q You think they have a perfect right to preach their gospel as they see fit? A That is right.

Q You believe every citizen has a perfect right to worship their Almighty God as they see fit? A Yes, sir.

Q And that is their business? A That is their business, yes, sir.

Mr. Himelfarb: That is all.

Mr. Noonan: That is all.

FRANCIS FURLONG, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan:

Q Are you a Police Officer of the City of Lockport? A I am.

Q You have been for how many years? A Approximately eleven.

Q On Sunday, September 15th last, did you go to Outwater Park in the afternoon? A I did.

Q Were you with someone else? A Officer Hull.

Q How did you happen to go there? A We were ordered to do so by the Sergeant.

Q Did he say something about a complaint being made? A Yes, he did, about a loudspeaker.

Q A loudspeaker? Did you go in a police car? A We did.

Q And did you find a loudspeaker in the park? A There was.

Q And before you found the loudspeaker did you stop in the park at any point? A We did.

Q Where did you stop with relation to the loudspeaker? A At the office of the Baseball Stadium.

Q That is on what street? A That is just in the park. I don't believe it is on any street.

Q In a driveway? A There is a parking lot there.

Q That point where you stopped the car is approximately how many feet from where you found this loudspeaker? A I would say 500 to 600 feet.

Q Did you and the other officer get out of the car? A We did.

562 Q And was the loudspeaker at that time ahead or back of you? A It was ahead of us.

Q And could you hear words or noise or volume coming from the loudspeaker? A We could.

Q Did you have any difficulty in hearing it? A None whatever.

Q What was the nature of it as you recall? The nature of the words? What kind of a program was it if you can recall? A I couldn't tell from there.

Q You could hear the noise, is that right? A That is right.

563 Q Did you listen to it for some time? A A few seconds; possibly a minute.

Q Then did you get in the car? A We did.

Q You proceeded where? A Out of the parking lot and around the island in Price Avenue.

Q Where the loudspeaker was? A That is right.

Q When you got to the point where this loudspeaker was what did you find at that point? A Well, there was this gentleman here was sitting in the car.

Q You mean the defendant? A That is right.

564 Q What kind of a car was it? A A blue sedan.

Q Did it have something on top of it? A Two horns.

Q Where were these horns facing? A Why, sort of an angle like that (indicating).

Q Northeast and southwest? A Northeast and northwest.

Q Northeast and northwest? A Yes.

Q The car, was that alongside Price Avenue? A Parallel to it, yes.

Q On what side? North or south side? A North.

Q Is that a part of Outwater Park north of Price Street? A Yes, it is.

Q When you got there was the volume from the loudspeaker greater or less than when you made your stop 500 feet away? A I would say it was greater.

Q Did you notice anybody speaking at that time? A Yes, there was a man speaking into the microphone.

Q How far was the microphone located from the machine that had the amplifier on it? A I would say 15 or 20 feet towards the front of the car or away from the front of the car, rather.

Q Did he have any group around him? A There was a group seated in the park.

Q About how many people? A I imagine 18, 20 or 25 possibly.

Q Was he facing this group? A Yes, he was.

Q About how far away was he from the group? A I would say 25 or 30 feet.

Q Now, did you make any observation as to any other people being in Outwater Park besides the group? A There were other people scattered.

Q Would you say more or less other people? A I wouldn't care to say about that.

Q You would say people were scattered around? A Yes.

Q What kind of a day was it? A Very nice.

Q Sunny, dry day? A Yes.

Q When you got up to the amplifier tell us what occurred or what you saw and heard? A Officer Hull got out the righthand side of the car which was nearest to the group and I got out the lefthand side and walked around.

Q Were you parked in the road alongside?

568 A Right alongside the car with the amplifier. And what Officer Hull said to this gentleman before I got around the car I don't know. After I got around there Hull reached in and shut off the amplifier and told the gentleman he was under arrest. He wanted us to read a pamphlet he had in his hand. We told him we were not interested in that.

Q And took him away? A That is right. And I said if they turned the loudspeaker on again we would come and tow it away. We left it there.

Q Did you come back later? A No.

569 Q Do you recognize in the room the speaker talking from the microphone? A He is not here.

Mr. Noonan: That is all.

Cross-examination by Mr. Himelfarb:

Q Now, Officer Furlong, there was a time when you got into the park and you came closer and closer to the loudspeaker? A That is right.

Q At the beginning you couldn't distinguish very much what was said, you do know somebody was talking over a loudspeaker? A Yes.

570 Q As you came closer and closer you did come right next to this car? A That is right.

Q Do you or do you not know there was a religious lecture being spoken through this loudspeaker? A Will you ask that again, please?

Q As you kept coming closer to the automobile was there a time you discovered there was a religious lecture being given through the loudspeaker? A No.

Q Could you distinguish the words? A Not in the car, no, sir.

Q There came a time when you got out of the

car and came up to his car where this loudspeaker was, is that right? A That is right.

Q Was there any time as you came closer to this other automobile with the loudspeaker on it you discovered it was a religious lecture? A No.

Q Did you hear anything about religion? A No.

Q Did you hear any words? A Just words; I wasn't paying any attention to them.

Q Are you hard of hearing? A Not a bit.

Q Was there anything in that lecture which would describe it as a religious lecture? A Not to me, sir. I wasn't interested in it. I paid no attention.

Q In other words, you had ears but you didn't hear? A I wasn't trying to hear.

Q From the time you got in the park up to the time the arrest was made you didn't hear anything that was spoken over the radio? A Not as far as individual words were concerned, no.

Q The words were distinct, weren't they? A I wouldn't say they were too distinct.

Q You couldn't describe any words that were said? A No.

Q You don't know at this time or after the arrest was made, whether or not there was a religious lecture being made or not? A I don't know.

Q Did you hear anything about God? A No.

Q Jehovah, Christ, or anything like that? A No.

Q Would you say this lecture was being given in an orderly manner? By orderly manner I mean was there any commotion there or disturbance? A No; only this gentleman and four or five of them standing in the island in back of the car.

574 Q Was there anyone while you were there talking to them, any of the speakers, who were objecting to this lecture being given? A No, not that I recall.

Q There was no commotion? A No.

Q There wasn't, outside of the loudspeaker, there wasn't any noise? A No.

Q Or disturbance? A No.

Q You say from the length of time while you were there, this lecture was being given in an orderly manner? A I would say so.

Q You say the Police Sergeant told you to go
575 down, a complaint was lodged? A Yes.

Q Do you know the name of the person that lodged this complaint? A No.

Q Do you know whether he or she is in Court today? A No, I don't.

Q If a complaint was lodged you think this person ought to be in Court?

Mr. Noonan: That is objected to, if the Court please.

The Court: Objection sustained.

Q Now, under ordinary circumstances if a
576 person lodged any complaint with the Police Department, and if a trial is being had for the violation of any ordinance, isn't it customary for the Police Department to have the person that lodged this complaint appear in Court against the accused? A It might be for the Police Department; not for an individual patrolman.

Q That is the Police Department's job?

Mr. Noonan: He can't answer that. I think he answered it.

The Court: He answered the question.

Q Repeat your answer. A For the Police Department, not for an individual patrolman.

Mr. Noonan: That is a matter of opinion. That is an improper question.

The Court: He has already answered it.

Mr. Noonan: It doesn't amount to very much.

Q Did anyone, while you were at the park, make any complaint about the use of the loudspeaker while you were making this arrest? A No, sir.

Q From the time you entered the park, until you took the prisoner, the defendant rather, into your custody, there wasn't any complaint lodged with you about the use of this loudspeaker? A No, sir.

Q Now, was this loudspeaker of a large or small volume of noise? A That I wouldn't know sir.

Q You live in Lockport, Officer? A Yes, sir.

Q While you were a resident of Lockport did you ever hear church bells being rung? A Yes, sir.

Q They ring various days of the week, sometimes Sunday mornings and sometimes early hours of the day? A That is rght.

Q Would you say these church bells, are they louder than the noise coming out of this loudspeaker?

Mr. Noonan: I object to that if the Court please, not part of this case.

Mr. Himelfarb: It is very important, your Honor.

Mr. Noonan: I object to that. We are trying this particular—

The Court: Why don't you confine that? Ask him if he was standing as close to the church bells as he was to the microphone if it would be as loud as the loudspeaker?

Mr. Himelfarb: How could he be close to the church bells? They are on towers.

The Court: He might be near the side wall. I don't think it is a proper question to begin with. I ruled it out four times.

Mr. Himelfarb: I think the Officer is capable.

Mr. Noonan: I object to the question.

Mr. Himelfarb: To tell us about the sound coming out of the loudspeaker.

The Court: It all depends how far away you are from the loudspeaker and from the church.

Q You say when you entered the park you were about 200 feet away from the loudspeaker when you first entered the park? A When we stopped to listen?

Q Yes. A I would say five or six.

Q How many feet would you say? A Five or six hundred feet.

Q If you were five or six hundred feet away from church bells which would make the more noise, a church bell or this loudspeaker?

Mr. Noonan: I object to this as not part of this case. We are trying a case for the use of an amplifier, not church bells.

Mr. Himelfarb: We are trying a religious issue, your Honor.

The Court: No.

Mr. Himelfarb: The whole case is a religious issue. 583

The Court: Strike it out.

Mr. Noonan: I want a ruling.

The Court: Objections sustained. There is no religious issue. This is a violation of a City Penal Ordinance for using a loudspeaker without a permit. There is no religious issue in this case whatsoever.

Mr. Himelfarb: May I have an exception?

The Court: You may have an exception.

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Q Was there any disturbance from the time you entered the park up to the time you made the arrest in the vicinity this lecture was being given? A No.

Mr. Himelfarb: That is all.

Mr. Noonan: That is all.

JOHN E. HULL, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan: 585

Q Are you an Officer for the City of Lockport? A Yes.

Q You have been for how long? A 19 years.

Q On September 15th did you go to Outwater Park in the afternoon? A I did.

Q Who accompanied you? A Officer Furlong.

Q Did you go in a Police Car? A Yes, sir.

Q Were you directed to go there in your line of duty by someone? A We were.

Q By whom? A The Desk Sergeant.

Q The Desk Sergeant. And did he state to you the nature of your trip and what you were to go for? A Yes, sir.

Q What did he say? A An amplifier being used in Outwater Park against the Ordinance, the City Ordinance, violation of a City Ordinance.

Q You got to Outwater Park about what time? A I don't remember exactly.

Q 4 o'clock or—

Mr. Himelfarb: I object to counsel leading the witness. Let him testify.

The Court: What time was it when you got there? Objection sustained.

The Witness: About 4 o'clock.

Mr. Himelfarb: May I interrupt? Will the Court instruct counsel not to lead? Counsel knows he should not lead a witness.

The Court: I will so instruct him.

Q Do you mean you got to where the amplifier was at 4 or you got to the edge of the park? A We got to the edge of the park.

Q Did you find an amplifier in the park? A We did.

Q Before getting to the amplifier did you make any stops? A Yes, sir, we stopped right by the baseball park.

Q I see. Did you get out of your car? A We stepped out car.

Q That point from where you later found the amplifier is about how many feet? A About between five and six hundred feet I should say, somewhere along there.

Q Did you hear the amplifier at that point? A We did.

Q And was it distinct? A Enough so we knew there was an amplifier being used.

Q Was being used? A Yes.

Q Then did you later on proceed away from that point? A We did.

Q To where? A Pulled up on the north side, the drive coming into Outwater Park to just in back of the car where the amplifier was. To a sedan.

Q Is that Price Avenue? A Price Avenue.

Q We want to get the location. At that point where you pulled up did you find the amplifier? A Yes, sir.

Q And where was it? On top of this car, or where? A On top of the car, the horns.

Q Did you stop in the road behind or in front or where? A We stopped—hesitated for a moment in back of the car enough to listen for a moment and then pulled up alongside it.

Q Then did you stop? A Yes.

Q Did you get out? A I got out.

Q When you got out did you see the defendant, Mr. Saia? A I did.

Q This is the defendant here, is it (indicating)? You recognize him? A Yes.

Q Where was he at that time? A Sitting in the car.

Q And you mean the car that had these horns on top of it? A Yes.

Q Were there horns on top of it? A Yes.

Q How many? A Two.

Q In which direction were they facing or pointing? A They were on an angle. I would say northeast and northwest.

Q Were they facing in or out or toward the park? A Towards the northside of the park.

Q Was he sitting on the right or left side of this parked car? A He was sitting—

Mr. Himelfarb: I object to counsel leading the witness. There is no testimony here he was sitting.

Mr. Noonan: He said he was in the car.

Mr. Himelfarb: Let him testify. Do you want to take the stand?

Mr. Noonan: It is a mediocre objection. I know where he is. I am trying to shorten it up.

Mr. Himelfarb: We haven't shortened it so far. Let's not shorten it from now on.

The Witness: In back of the steering wheel.

Q On the left side or right side? A On the right side.

Q Was the amplifier in operation? A What?

Q Was the amplifier in operation? A Yes, sir.

Q Were the sounds coming out of it words that could be heard by you? A Yes, sir.

Q Were they distinct? A Very distinct.

Q Were they loud? A Real loud.

Q Now, at that time did you notice any microphone? A Yes, there was a mike about 20 feet to the northwest of the car.

Q Was that connected in any way with this car the defendant was seated in? A It was.

Q By what means? A Wires.

Q Did you notice if any person was speaking into that microphone? A There was.

Q Do you recognize in this courtroom the person who was speaking? A I don't see him here.

Q In front of that microphone or around that amplifier was there any group of people? A I would say 20-25 people scattered around in front of it, in that vicinity. 595

Q About how many feet were they from the microphone? A Probably 10 or 15 feet.

Q Were they seated or standing? A Standing.

Q What? A Standing most of them. There was some benches a little farther away with people sitting on the benches.

Q Did you make any observation in the park whether there were any other people besides this group? A There were. 596

Q Would you say the numbers of these other people equalled or exceeded the amount of people in front of the microphone? A I wouldn't attempt to say because I didn't look them over very well.

Q You say people in there, other people? A Yes.

Q With this particular group or away from the group? A A little farther distance away around the tables and scattered around.

Q What did you do if anything when you got there as far as this defendant is concerned? A I walked over and opened the door of the car and asked him if he had a permit. He said, "No." I said, "Will you stop this amplifier?" He didn't pay any attention—never moved. 597

Q Did he hear you? A I asked the question twice. He paid no attention. I pulled the cord myself and took him out of the car and took him over and put him in our car.

Q When you say you pulled the cord what cord do you mean? A The amplifier cord.

Q Sort of like an electric cord? A Large electric cord.

Q How was it attached? A There was a plug end on the dash.

Q Did you disconnect that? A Pulled it out.

Q Arrested him and took him away? A That is right.

Q You were there at the amplifier, at his machine, about how long approximately? A Not any greater time than three minutes.

Mr. Noonan: You may ask.

Cross-examination by Mr. Himelfarb:

Q Officer, as you approached this automobile with the loudspeaker did you hear some of the words coming out of the loudspeaker? A Why, I heard words.

Q As you got closer the words became more distinct? A Yes.

Q Would you say it was a religious lecture being given through the loudspeaker? A Not until we got to within close range.

Q When you got in close range, good hearing vicinity, you knew it was a religious lecture? A Didn't pay any attention to what the words were. We were not interested in that.

Q Did you come close enough to know or not there was a religious lecture being given there? A As I say, I didn't pay any attention to the words being used. All we were interested in was whether the man had a permit to operate it.

Q Are you good of hearing? A Yes.

Q Can you hear me? A Yes.

Q Do you know what I am talking about now? A Yes.

Q You were not interested in that particular thing, what was coming out of the microphone, is that right? A No, sir, I wasn't interested.

Q You don't know whether or not there was a religious lecture coming out? A The man might have been talking about himself for all I know or all I care.

Q Just answer the question. You don't know there was a religious lecture? A I don't know whether it was a religious lecture or not, no, sir.

Q Was there any disturbance within the vicinity where the lecture was being given? A None whatever.

Q Was there any commotion? A None whatever.

Q It was being given in an orderly manner? A That is right.

Q Did the defendant offer any resistance? A He did not.

Q He went along with you peacefully? A He certainly did.

Q While you were there did anyone lodge any complaint to you about this loudspeaker? A While I was there?

Q Yes. A No.

Q Do you or do you not know whether or not anyone had lodged a complaint about the use of this loudspeaker? A I don't know.

Q You don't know? A No. I was sent there for a specific reason. That is what I took care of.

Q Of your own knowledge you don't know to this day whether anyone complained of the use of the loudspeaker? A That is not my business.

Q I am asking you what you know. A No, I don't.

Q Did the use of this loudspeaker annoy you? A Annoy me?

Q Yes. A No.

Q Did it disturb you? A No, it didn't disturb me.

Mr. Himelfarb: That is all.

Redirect examination by Mr. Noonan:

Q You said it didn't disturb you. You were sent by your superior? A That is right.

Q On a claim a loudspeaker was being used? A That is right.

Q In the line of your duty you went out to determine whether it was being used? A Yes.

Q You placed this man under arrest when you found the loudspeaker in use? That disturbed you enough to place him under arrest? A I don't know.

Q What I am getting at is you arrested the defendant?

Mr. Himelfarb: Because he had orders to arrest him.

Q You did discover there was a violation of the ordinance? A That is right.

Q You were convinced there was? A That is right; the speaker was being used.

Mr. Noonan: That is all.

Recross-examination by Mr. Himelfarb:

Q The use of that didn't annoy you or disturb you? A I have listened to a lot of noise on the street and noise doesn't disturb me.

Mr. Himelfarb: That is all I want to know, officer. That is all.

Mr. Noonan: That is all. That is our case, if the Court please. We rest.

Mr. Himelfarb: Your Honor, at this time I want to make the usual motion. I move for a dismissal of the complaint on the following grounds: The evidence does not show the defendant is guilty of the crime charged; that the prosecution has failed to prove the defendant guilty as charged in the complaint; the evidence is insufficient to support a conviction. That the undisputed evidence is that this was stationary sound equipment and was not a sound truck equipped with sound amplifier as contemplated by the Ordinance. The Ordinance, when properly construed, does not apply to the use of stationary sound reproducing devices at public meetings where the people were assembled for worship of Almighty God and the defendant was using the sound device for the purpose of amplifying his sermon for the benefit of those assembled.

The Ordinance when properly construed and applied is confined to the commercial use of sound trucks or like devices or sound reproducing devices used for commercial purposes and commercial advertising. The Ordinance does not include the use of a sound reproducing device at a private or public assembly where people are gathered for non-commercial purposes,

whether political, religious, or otherwise. Accordingly the activity of defendant does not fall within the ambit of the Ordinance and therefore he was not required to apply for a license or obtain a license as stipulated by the Ordinance.

The Ordinance when properly construed and applied, does not include the use of sound reproducing devices of any kind or character and for any purpose on private property, but is confined to the use of such devices on public streets.

If the Ordinance is construed and applied to cover the defendant's activity, then it unlawfully abridges and denies defendant's right of freedom of conscience, freedom to worship Almighty God, freedom of press, and assembly contrary to the United States Constitution, First and Fourteenth Amendments.

If the Ordinance is construed and applied to cover the defendant's activity, then it unlawfully abridges and denies defendant's right of freedom of conscience, freedom to worship Almighty God, freedom of speech, press and assembly, contrary to the Constitution of the United States and the Constitution of the State of New York.

The Court: All denied.

Mr. Noonan: I ask the Court for permission to call another witness whom I just discovered during the recess, who I did not know before and I think he can testify to many facts to the use of the amplifier

that Sunday afternoon. Had I known it before I would have produced him.

Mr. Himelfarb: At this time I object to any additional testimony as the prosecution has closed its case.

Mr. Noonan: The defendant, if the Court please, has not started his case except on his motion. No testimony has been offered by the defendant. I think the People should be allowed to offer this testimony.

Mr. Himelfarb: The prosecution has closed its case and I object to any witnesses at this time.

The Court: I will allow the witness to testify.

Mr. Himelfarb: May I have an exception?

The Court: You may have an exception.

FRANCIS McLAUGHLIN, was called as a witness in behalf of the People and having been first duly sworn testified as follows:

Direct examination by Mr. Noonan:

Q You are a Police Officer of the City of Lockport? A That's right.

Q And last Sunday, September 22nd, were you on duty? A No, I was not on duty.

Q And that afternoon did you go to Outwater Park? A That's right.

Q While you were in Outwater Park did you hear any amplifier being used? A I did.

Q What time did you first hear it? A About 10 minutes after 4.

Q At that time you were where? A Down at the east end of the park near the Park Office.

Q You were accompanied by someone? A That is right; by my little niece.

Q You had brought her with you? A That is right.

Q What was your purpose in going to Outwater Park? A To relax and enjoy myself.

Q That point where you heard the amplifier for the first time was about how far away would you say? A I would say it was a good 600 feet, perhaps more.

Q East or west of the amplifier? A Well, it is sort of a southerly direction from where the meeting was held.

Q Then did you proceed into the park and around the park? A That is right. I went over to the park near the rose garden.

Q That is what end of the park? A The east end of the park. I would say perhaps 250 feet from where the meeting was being held.

Q Could you hear the amplifier there? A Yes, I could very distinctly.

Q Do you know what was being said over the amplifier? A Yes, I do.

Q And what was the nature of the talk? A Well, I don't know if I would call it distinctly religious, but I know there were several remarks made about the League of Nations and what not.

Q Did you stay at that point during the entire program of the amplifier? A I did until the Police Officer arrived I stayed there.

Q You saw them arrive? A That is right.

Q As to the position of the automobile, the position the automobile was in, the microphone and the group of people and so forth, as the Police Officers testified to, were you in the Court Room? A Yes, I was.

Q That is about correct, isn't it? A That is right.

Q And you heard the amplifier in operation about how many minutes altogether? A Oh, I would say at least about 15 minutes.

Q And you saw the Police come and did it stop then? A That is right. The speaker moved away from the microphone.

Q What affect had the noise from the amplifier upon you? How did it affect you? A I went to Outwater Park to relax and enjoy myself. I would say that interfered with my relaxation.

Q Did it annoy you in any way? A I would say yes.

Q You didn't go to the park to listen to the amplifier? A No; I certainly didn't.

Q You went there for what purpose? A To enjoy the facilities of the park and relax.

Q And did you go up to where the amplifier and microphone and this group of people was assembled at any time? A I went up when the Police Officers arrived.

Q Did you see the defendant? A Yes; he was there.

Q You know the defendant, do you? A Oh, yes.

Q Do you know who was speaking over the microphone if anybody was speaking over it? A Yes, it was Mr. Reid.

Q You refer to the gentlemen sitting next to him, Walter Reid? A That is right.

Q I don't know whether I asked you how many people were in this group? A I counted them; I believe it was about 21.

Q Now, besides this group of 21, during the time that the amplifier was in operation and

up to the time the Police shut it off, did you see any other people around the park? A There were a lot of people in the park spread all over.

Q Would you say they exceeded or were smaller than the number in this group? A They exceeded the number by far.

Mr. Noonan: That is all.

Cross-examination by Mr. Himelfarb:

Q Mr. McLaughlin, could you hear this lecture distinctly from where you were? A What spot are you referring to?

Q During the entire time you were in the park while this lecture was being given by the amplifier? A I testified at what point I heard it near the Park Office which was about 600 feet. I told the Corporation Counsel I went to the rose garden which was 250 feet away. I don't know which point.

Q Could you hear it distinctly 250 feet away? A Very distinctly.

Q Would you say it was religious? A I never heard the League of Nations discussed in a religious lecture.

Q In any kind of a lecture where they put in "League of Nations" it could not be a religious lecture? A I think you are stretching a point.

Q You make a conclusion here. You heard the League of Nations and therefore it couldn't be a religious lecture. Did you hear anything about Jehovah God, Christ? A I heard Jehovah God, yes.

Q Anything about Christ? A Dates and other incidental things.

Q Did you hear quotations from the Bible? A I don't recall that; might have been quota-

tions from the Bible, quotations, I didn't pay any attention.

Q You wouldn't form a conclusion because the lecture contained some reference to the League of Nations it wouldn't be a religious lecture, would you? A I wouldn't say references to the League of Nations would definitely label it religious.

Q I am not saying that. I am merely saying this: due to the fact any lecture which contained or referred to the League of Nations, would you say because it referred to the League of Nations it couldn't be a religious lecture? A No; I wouldn't say that.

Q How long did you listen to this? A Oh, approximately 15 or 20 minutes.

Q In this 15 or 20 minutes you could hear the lecture distinctly? A Yes.

Q Of course, when you were farther away you couldn't hear it distinctly either, when you were 200 feet? A Naturally.

Q You did hear Jehovah God. From what you heard would you say it was a religious lecture or wasn't? A Well, my understanding of a religious lecture I would say it wasn't.

Q You formed that conclusion because the League of Nations was referred to? A No.

Q Was that lecture being delivered in an orderly manner? A Surely.

Q Any commotion or disturbance? A I don't know what would cause a commotion.

Q I am not asking you that. Was there any disturbance in it? A No.

Q Were you going around the park and asking people if they were complaining about this lecture? A No; I didn't have to.

Q Did anyone complain to you? A Yes, they did.

Q And you got them in Court? A No, not that I know of.

Q You are a Police Officer, aren't you? A That is right.

Q None of the people that complained about this are here in Court today? A I understand they were here previously.

Q Were you in Court while this entire case was going on? A No, I wasn't.

Q What were the names of some of the people that complained to you? A Mr. VanWyck was one.

Q He complained to you? A That is right.

Q Would you say Mr. VanWyck's testimony is correct or incorrect when he testified on the stand he didn't complain to any Police Officer?

Mr. Noonan: I object to that, if the Court please. That is a conclusion.

The Court: The Court would like to ask one question: Are you testifying as an individual citizen or as a police officer?

The Witness: As a citizen and a taxpayer.

Q Now, if Mr. VanWyck had testified under oath that he did not lodge any complaint with the Police, and he didn't complain about this lecture, would you say he was telling the truth? A I don't know what Mr. VanWyck was referring to.

Q If he says he didn't lodge any complaint would you say he was telling the truth? A He didn't lodge any complaint?

Q Yes. A With anyone you mean?

Q Yes. A No, he—

Q Would he be telling the truth from what you know? A No.

Q He wouldn't. Now, was there very much noise there given out by the loudspeaker? A When I could hear distinctly 250 feet or more away I would say it was quite a bit of noise.

Q You could hear every word that was spoken? Could you hear most of the words that were spoken? A Yes, when I was in the rose garden.

Q What were some of the words spoken? A I told you previously.

Q You told me one of them was "League of Nations" and "God". What else did you hear? A A lot of dates quoted. I didn't listen intently.

Q Dates about what? A They didn't interest me.

Q Outside of the three words "League of Nations" and "Jehovah God", is there anything else you can remember that you heard in the 15 minutes? A No.

Q You don't recall anything outside of those three words? A That is right.

Q By that I mean "League of Nations" and "Jehovah God", that is four words? A I mention the "League of Nations" that is part of a lengthy discourse.

Q Did you take the names of any people that were in the park that were complaining about this loudspeaker outside of Mr. VanWyck? A No, I didn't take any name, no.

Q You live in Lockport, do you? A That is right.

Q Do you ever hear church bells rung in Lockport? A Surely.

Q Were you ever as close to a church as you were close to this loudspeaker when the

church bells were being rung? A Naturally. Sometimes you are passing.

Q Would you say the noise of church bells are louder than the noise coming out of this loudspeaker? A Why sure, when you are close they would be loud.

Q Do the bells of churches annoy you? A Not any more than a factory whistle would annoy me. I look upon them as a time signal.

Q Do you know what kind of car the defendant had there? A Yes; he had a Studebaker.

Q Do you know what year? A Studebaker President; light blue. I don't recall what year.

Q Were you close to the loudspeaker when the Police made the arrest? A That is right.

Q Did you hear any conversation? A No, I didn't except that the defendant wouldn't turn it off and offered a card. He had to turn off the amplifier.

Q How close were you to the Police when this arrest was made? A 20 or 25 feet. I was gradually approaching.

Q Did you ever get closer than 25 feet? A Surely.

Q What was the closest you ever got? A What point do you refer to?

Q The closest you got, nearest point on September 22nd when the loudspeaker was being used? How close did you get to the loudspeaker, the closest you got to the loudspeaker? A I was right beside the car.

Q Did you hear Mr. Saia, the defendant, tell him he was a minister of the gospel? A That had taken place before I approached.

Q Pardon me? A That had taken place before I got to the car. I was gradually walking towards the car.

Q Did you hear him tell him he was a minister of the gospel? A No, I didn't.

Q Do you go to this park often? A Yes, I do.

Q Is the baseball park nearby? A Yes, they are across.

Q Were you ever in the baseball park when they used the loudspeaker? does it annoy you? A No, it doesn't.

Q Can you hear that loudspeaker when you are in this Outwater Park, the loudspeaker in the baseball park? A No, not distinctly. It is enclosed.

Q That doesn't annoy you? A No.

Q The church bells don't annoy you? A No.

Q The loudspeaker from the Watchtower Bible & Tract Society does annoy you? A Yes, on Sunday afternoon.

Q Are their principles contrary to your belief? A I wouldn't say so. I respect anybody's belief.

Q Do you think the ordinary individual in the United States has a right to worship his God as he believes? A Certainly.

Mr. Himelfarb: That is all.

Mr. Noonan: That is all. That is all we have. Just one more question, Mr. McLaughlin, if you will step up here.

Redirect examination by Mr. Noonan:

Q You were one of the Police Officers who previously arrested this same defendant for a violation of the Ordinance on a previous Sunday? A That is right.

Mr. Noonan: That is all.

Recross-examination by Mr. Himelfarb:

Q What Sunday? What date? A That was the first occasion.

Q When was that? A I couldn't tell you offhand.

Q Previous to these charges we are trying at the present time? A Yes.

Mr. Himelfarb: I move to strike it out as incompetent, irrelevant and immaterial. We are trying him on a violation September 15th and 22nd.

Mr. Noonan: I am showing that for the purpose of identifying him as being the same man.

The Court: You already identified him before. Objection sustained.

Mr. Himelfarb: No questions.

WALTER M. HAMMOND, was called as a witness in behalf of the Defendant and having been first duly sworn testified as follows:

Direct examination by Mr. Himelfarb:

Q Are you a member of Jehovah's witnesses? A I am, sir.

Q Are you an ordained minister? A I am.

Q Ordained by whom? A Jehovah God. I got my ordination from Isaiah.

Mr. Noonan: I object to this and move to strike it out. He answered the question, he is an ordained minister. That is as far as you get here.

Mr. Himelfarb: He has a right to say where he was ordained.

Mr. Noonan: We are not interested in that.

Mr. Himelfarb: We put a minister or priest on and ask where he was ordained. Nothing wrong with that.

Mr. Noonan: Ask what religious organization or sect he is ordained in. I have no objection to that.

Q What religious sect are you ordained in? A Watchtower Bible & Tract Society. I represent them.

Q As a member of Jehovah's witnesses and the Watchtower Bible & Tract Society, did you ever ask the Chief of Police for a permit to use a loudspeaker? A I did.

Mr. Noonan: That is objected to as not within the issue. We are trying the defendant for not having a permit. We are not trying this man here.

The Court: Object sustained.

Mr. Himelfarb: Your Honor, this is very important because the Jehovah's witnesses had asked the Chief of Police for a permit which was denied.

The Court: Jehovah's witnesses are not on trial. Samuel Saia is on trial. Objection sustained.

Mr. Himelfarb: Well, he is on trial, yes. Mr. Saia attempted, was attempting to get a permit. I think we have a perfect right to find out whether or not that particular organization or sect were denied a permit to use a loudspeaker.

The Court: As I stated before, Jehovah's witnesses are not on trial. Samuel Saia is on trial. Objection sustained.

6 Q Did you ever ask for a permit so that Samuel Saia could use a loudspeaker? A I did.

Mr. Noonan: That is objected to; same objection. He did?

Q Who did you ask? A The Chief of Police.
Q Where did you ask him? A At his home.
Q What did he say?

Mr. Noonan: This is under my objection, if the Court please.

The Witness: He wouldn't give me a
7 permit.

The Court: Objection sustained. When you get the defendant on the stand you can ask that.

Mr. Noonan: I object to that and move to strike it out.

Mr. Himelfarb: If I send my wife some place to get a permit that is not proper?

The Court: Your wife isn't on trial.

Mr. Himelfarb: I am not on trial. They asked for Mr. Saia to get a permit.

Mr. Noonan: There is no testimony that
8 he asked for Mr. Saia.

Mr. Himelfarb: Let him testify. He will testify to that.

The Court: Lay the groundwork.

Q Do you know whether or not Mr. Saia was going to operate a loudspeaker for the month of September? A I did.

Q And did you request a permit so he could operate the loudspeaker? A I did.

Mr. Noonan: This is under my objection.

The Court: Will you ask the date?

Mr. Himelfarb: I will get to that, your Honor. I will get it. 64

Q When did you ask the Chief of Police for a permit? A Around the 24th or 26th of July.

Q Did you tell him when the permit was to be used? Q I did.

Q What did you tell him? A For the 1st, 8th, 15th, and 22nd days of September.

Q What did he say? A He said he had complaints about it. He issued a previous permit and inasmuch as he had complaints he couldn't grant another permit. 65

Q Did you ask anyone else for a permit? A I did. I went to the Mayor of the City of Lockport, Mayor Ringueberg.

Q What did you say to him?

Mr. Noonan: I object to that.

The Witness: He wouldn't—

Mr. Noonan: I object to this testimony as incompetent, irrelevant and immaterial and not within the issue of the lawsuit.

Mr. Himelfarb: It is very important on the issue. 65

Mr. Noonan: It is to him, yes.

Mr. Himelfarb: They denied a permit; that is important.

The Court: Mr. Hammond is not on trial; Jehovah's witnesses are not on trial; Samuel Saia is on trial. Objection sustained. No further testimony on that or I will hold you in contempt of Court.

Mr. Himelfarb: That is your privilege

52 if you want to hold me in contempt of Court.

The Court: All that testimony about the permit will be stricken out.

Q Were you alone? A Mr. Mort was with me, Roy Mort.

Q By the Chief of Police you mean this man that testified, Mr. Pittard? A No, I mean Mr. William Newell, Chief of Police of Lockport City.

Mr. Himelfarb: That is all.

Cross-examination by Mr. Noonan:

53 Q As I understand from your testimony you were refused a permit? A Yes, positively so.

Mr. Himelfarb: That is what we are trying to prove and the Court and you are preventing me from bringing it out.

The Witness: We have a witness to that effect.

(Discussion off the record.)

The Court: The Court takes the position the last witness was not on trial.

54 Mr. Himelfarb: He is a witness and naturally he is not on trial. Mr. Saia is on trial. He was acting for Mr. Saia; it was for Mr. Saia. He can delegate him to go to someone else that I do not know to get a permit which was denied. They had a permit at one time and later on the permit was denied. I think that is an important part of my case.

Mr. Noonan: It is in there and I don't object that they applied for a permit and the permit was denied.

Mr. Himelfarb: That is what I want to prove. That is what I am going to prove here.

ROY MORT, was called as a witness in behalf half of the Defendant and having been first duly sworn testified as follows:

Direct examination by Mr. Himelfarb:

Q Are you a member of Jehovah's witnesses? A Yes, sir.

Q Are you an ordained minister? A Yes, sir, I am ordained and thereafter I have been preaching the gospel since World War I.

Q Who for? A Watchtower Bible & Tract Society organized by the State of New York and the laws of Pennsylvania, for charitable work and to preach.

Q Have you any authority from the Watchtower Bible & Tract Society? A Yes, sir. This is my recognition and my name. If you want further information write to Watchtower.

Q Just answer the question.

Mr. Himelfarb: I offer in evidence this authority from the Watchtower Bible & Tract Society authorizing Roy Mort to preach the gospel for the Watchtower Bible & Tract Society.

(Card referred to was received in evidence and marked Defendant's Exhibit 1.)

Q Sometime around July 24th or 26th did you know that Samuel Saia was going to operate a loudspeaker in Outwater Park in Lockport?

Mr. Noonan: Just a second. I object to that as immaterial.

The Witness: Yes, sir.

Mr. Himelfarb: I am leading up to it, your Honor. I have a perfect right.

Mr. Noonan: He can't lead up with a question like that.

Mr. Himelfarb: That is the only way you can lead up. Did you know he was going to operate a loudspeaker?

The Court: Overruled. Go ahead.

Mr. Noonan: Exception.

Q Were you asked by Mr. Saia to get a permit?

Mr. Noonan: He is leading the witness. He has been complaining about me. Now it is his turn.

Q Did anyone ask you to get a permit for Mr. Saia? A Yes, Mr. Hammond as company servant of the Lockport company. I accompanied him to get this permit for Mr. Saia to operate the sound car September 1st, 8th, 15th and 22nd.

Q Did you go to the Chief of Police? A Yes; on or about the 24th or 26th of July.

Q You were denied the permit? A Yes, sir, by Mr. Newell.

Q Did you ask anyone else for a permit? A Yes, sir.

Q Who else? A The Park Superintendent right there (indicating). What is his name?

The Court: Goehle.

The Witness: Yes, something like that. Mr. Hammond, Mr. Nelson Howell and myself visited his home and asked for it, that Mr. Newell referred us to him.

Q Was it denied by him? A He flatly denied a permit.

Q Do you know whether anyone else was asked in your presence for a permit? A No; that is the only one I know of, these two.

Mr. Himelfarb: That is all.

Cross-examination by Mr. Noonan:

Q You had been operating in the park before that under a permit? A Yes, sir.

Q And you knew, of course, at that time a permit was required, didn't you? A Well, see, this work understand—

Q I am asking you: You only had a permit issued by the Chief of Police to operate under that this year, didn't you? A Yes.

Q By reason of that you knew that the permit was required, isn't that true? A I knew. He is the point—

Q Answer the question. A I am not going to commit myself, your Honor.

Q Yes, or no? A I am not going to commit myself. On this Book I swore to tell the truth. They may have an ordinance conflicting with God's law.

Mr. Noonan: I move this not be taken down.

The Court: Let the higher courts decide that, this conflict. Answer it yes or no.

Q If you can't answer say you don't understand and I will make it plainer. Read the question, please.

(Last question read by the Reporter.)

Q Can you answer that? A This permit is required, but here is the point and I want you to bear this—

The Court: Answer the question yes or no.

Mr. Himelfarb: I think—

The Witness: Not a permit required to preach the gospel which I am an ordained minister to do.

Q Let us get this: This last statement you contend regardless of any city ordinance, you have that right because you are an ordained minister of the gospel? A Yes.

Mr. Himelfarb: Sure, he is right.

Mr. Noonan: Just a second.

The Court: Let the witness answer.

Mr. Noonan: He is my witness now; not the attorney's.

Q In other words, you believe in the religious organization, sect, or what you may call it, to which you belong, and by reason of that membership you think you should follow the teachings and the directions of that organization regardless of city ordinances, state laws or national laws? Will you answer that? A When they conflict with God's laws.

Q Now—

The Court: Let him qualify it.

Mr. Himelfarb: Let him answer.

The Witness: When the laws conflict with God's laws which we are commanded by Almighty God to obey. The courts of the land recognize that.

Mr. Noonan: I move to strike that out. That is a matter of law.

Q You were a member of Jehovah's witnesses at the time that a permit was granted this year to use the amplifier, weren't you? A Yes.

Q And you operated in Outwater Park while that permit was in force? A Yes.

Q Yes. Now, you have been in Court and heard the testimony of various witnesses as to the size of the congregation or crowd that listened to the Jehovah's witnesses on these two occasions, haven't you? A Yes.

Q What do you say was the number of your group that was there? A Which date do you have reference to?

Q Take the 22nd. A Well, I would say 50 people.

Q How about the 15th? Are you including the whole park or your group? A Just Jehovah's witnesses.

Q How many on the 15th? A That is all Jehovah's witnesses to hear the speech?

Q Yes, that is right. A About 40.

Q There were a lot of other people in Outwater Park, were there? A No, I wouldn't say there was.

Q There wasn't anybody in Outwater Park except your group? A They were not in the open. All our group was up a long way.

Q These amplifiers you used at that time were placed in such a manner they could cover the entire north area of that park? A No, sir.

Q Did you need an amplifier to talk to 40 or 50 people gathered around the amplifier? A When we was up close like we are here you can hear people talk.

Q Wasn't it your sole and only purpose of taking that amplifier in Outwater Park and using it to attract the general public in the park, not only your group but everyone else? A No, that wasn't the object.

Q It wasn't the object before? A No. May I tell you the object? We invited the people by giving handbills and placards to a public assembly to worship Almighty God.

Q Before you were known in the community they had that park maintained by the City of Lockport before you spread any handbills, isn't that a fact? A Understand, a park is a place of assembly to worship God.

Q No, I don't understand that; I don't understand that the park is for that. A You will find according to the law books it is a place to assemble and worship God.

Q We will differ on that part. You are a resident of Lockport? A Yes, sir.

Q You don't want it recorded here in this record here that the only people that went out there Sunday to gather in Outwater Park were those people that were invited by pamphlets you spread out among the community, do you? Do you want us to believe that? A That is irrelevant to the question what people go there for. I am not able to say.

Mr. Himelfarb: How can he testify to that?

Q You know the park? A Yes.

Q There were people there not members of Jehovah's witnesses? A Yes, there were a few people there.

Q You heard some witnesses here testifying? A Yes.

Q There were other people, they are out there today and next Sunday and were there last Sunday. Now, these amplifiers on top of this sound truck they faced east and west, didn't they, or sort of diagonal? A They faced the audience, just the people who assembled there to hear the speech amplified.

Q You heard the testimony of the witnesses who could hear it away from the audience many feet? A Your Honor, those testimonies are not correct.

Q They are untrue? A That it has been proven.

Q They are untrue? A Yes. It wasn't heard 600 feet away.

Q How far do you think you could hear the sound from these amplifiers? You give us your basis of how far? A Not more than right here, the immediate audience could hear it distinctly, only those assembled to hear the discourse could hear it distinctly, what the man was talking about.

Q I ask you and listen to this: Both on the 15th and 22nd days of September when the amplifier was disconnected by the Police Officers, is it not a fact this speaker went down to your group and talked to them without the use of the amplifier? A Yes, they went up to the audience. Like here I was one of the speakers that did it. The stand was brought up but you couldn't hear. I went to the audience so they could hear.

Mr. Noonan: That is all.

Mr. Himelfarb: That is all.

NELSON F. HOWELL, was called as a witness in behalf of the Defendant and having been first duly sworn testified as follows:

Direct examination by Mr. Himelfarb:

Q Sometime around July 24th or 26th did you accompany Mr. Hammond when he went to the Police Department to ask for a permit so Mr. Saia could operate the loudspeaker? A I went with Mr. Hammond to the Police Chief's home. At that time he wasn't home. I went to Mr. Goehle with
7 Roy Mort and to the Mayor of the City of Lockport. They sent us around like circles everybody—

Mr. Noonan: I object to that last expression and move to strike it out.

The Witness: The Mayor sent us to the Chief of Police; he has the only right to issue the permit. The Chief of Police sent us to the Park Superintendent and the Superintendent of Parks sent us to the Parks Commissioners.

Q Were you in the company of Mr. Hammond
8 when he went to the Chief of Police? A The Chief of Police was not home. Just Roy and Hammond went to the Chief of Police at that time.

Q You went with Mr. Hammond— A To the others.

Mr. Himelfarb: That is all. You may ask.

Cross-examination by Mr. Noonan:

Q Are you an ordained minister, too? A I am.

Q You know that you had had a permit and had operated the amplifier out there? A Yes.

Q Then the permit was taken away, that is right, wasn't it? It expired? A Expired, wasn't taken away.

Q When you went to this person you spoke of didn't he tell you complaints had been made about the use of the amplifier? A Yes. We asked for the names and they wouldn't give them.

Q He told you complaints were made and refused to give you the permit? A Refused to give us the names of the parties.

Mr. Himelfarb: Let him answer.

Mr. Noonan: He hasn't answered me. This is not responsive on my part. The witness can't say what he wants to.

Mr. Himelfarb: He is answering it. He said—

Mr. Noonan: Just a moment. Read the question, that will answer itself. If I am wrong I will admit it. Read the question.

(Last question read by the Reporter.)

Q Answer yes or no. A Refused the permit, yes.

Mr. Noonan: That is all.

Redirect examination by Mr. Himelfarb:

Q Did you ask him who had made complaints? A I did. He refused to give us the names of the complainants.

Q The names of the people who made complaints? A Saying he wouldn't give their names.

Mr. Himelfarb: That is all.

Mr. Noonan: That is all.

2 SAMUEL SAIA, the Defendant, was called as a witness in his own behalf and having been first duly sworn testified as follows:

Direct examination by Mr. Himelfarb:

Q Mr. Saia, are you an ordained minister? A I am.

Q Ordained by who? A By the Almighty God.

Mr. Noonan: Now, I object to this.

The Court: I will let him answer that;
3 he has a right.

Mr. Noonan: I imagine it is in the Bible & Tract Society?

Mr. Himelfarb: I am bringing that out if you will give me an opportunity. You are a member of what sect?

The Witness: Not a sect.

Q What is it? A Christian.

Q What is the name of the organization? A Watchtower Bible & Tract Society.

Q As a minister of the gospel do you preach
4 the gospel? A That is right.

Q You are authorized to do this work by whom? A By Almighty God.

Mr. Noonan: I object to that, who he is authorized by to do it. That is not a proper question. I object to it.

Q Do you represent the Watchtower Bible & Tract Society?

Mr. Noonan: Let us get an answer.

The Witness: I am authorized by the Almighty God.

The Court: I will let him answer the question.

The Witness: I am authorized by the Almighty God under the supervision and direction of the Watchtower Bible & Tract Society which is a charitable organization and was organized under the laws of the State of New York and Pennsylvania laws.

Q Have you any authority from the Watchtower Bible & Tract Society authorizing you to preach the gospel? A I do.

Q I show you this authority from the Watchtower Bible & Tract Society to preach the gospel in the name of the Watchtower Bible & Tract Society? A Yes.

Mr. Himelfarb: I offer it in evidence.

Mr. Noonan: No objection.

(Authorization referred to was received in Evidence and marked Defendant's Exhibit 2)

Q Are you paid for this kind of work? A No, sir.

Q Does anyone who engages in Jehovah's witnesses get paid?

Mr. Noonan: That is objected to.

The Court: Objection sustained; no basis.

Mr. Himelfarb: I am getting to the basis of the religion. That is the only way.

The Witness: Not that I know of.

The Court: There is no religious question being argued.

Mr. Himelfarb: The whole question, your Honor, is the question of religion. When the statute prohibited the freedom of worship and speech the appellate courts have held that that is unconstitutional and illegal.

The Court: He has already testified he is a minister of Jehovah God. There is no question of any religious principle whatsoever.

Mr. Himelfarb: It is important also in the various cases I have read, whether a person preaching the gospel hands out pamphlets to a commercial prospect or a non-commercial prospect, those are two very important elements which it is necessary for me to prove.

Mr. Noonan: As far as his acts are concerned, he can testify they were not commercial. He cannot pretend to testify to anything else.

The Court: Are you asking me the question?

Mr. Himelfarb: Yes.

Mr. Noonan: That is all right.

Q Do you get any pay for doing this work? A No, sir.

Q Do you get any pay for operating this loudspeaker? A No, sir; that is on my own.

Q You do that gratis? You don't get paid for that? A No, sir.

Q When you were operating this loudspeaker on September 15th and 22nd, were you engaged in

Watchtower Bible & Tract Society sermons? A That is right.

Q And as a Jehovah's witness? A That's right.

Q And that was being done for no payment for it by anyone? You were merely acting as a member of Jehovah's witness, as a member of the Watchtower Bible & Tract Society? A That is right.

Q Was there any sermon being delivered at that particular time? A Sermon?

Q Yes, sir. A Yes, one was, "World's Woes! Why is it Permitted."

Q That was being delivered by who? A That was delivered by Mr. Wendt.

Q Was he a member of the Watchtower Bible & Tract Society? A That is right, he was. He is a special primer in fact.

Q Was he delivering a message for the Watchtower Bible & Tract Society? A Yes, sir.

Q On the 22nd was there anyone delivering a message over the loudspeaker? A Yes.

Q Who was that?

Mr. Noonan: Walter Reid.

Q Is this the man (indicating)? A That is right.

Q Do you or do you not know he was delivering a lecture of the Watchtower Bible & Tract Society? A He was.

Q Was that a religious lecture? A Yes, sir, Christian lecture. In fact, a Bible lecture.

Mr. Himelfarb: You may ask.

Cross-examination by Mr. Noonan:

Q You yourself personally didn't make any request for any permit to operate, did you? A No, sir.

Q To anybody? The City officials? A No, sir.

Q You live in Buffalo? A That is right.

Q What is your business or occupation over there?

Mr. Himelfarb: He said he was an ordained minister.

Q The one you get a lucrative return from? A That is different.

Q Where do you work? A For the City of Buffalo.

Q What department? A City Street Department, Ash and Garbage.

Q Up until the time that you were first arrested in Lockport for operating this loudspeaker, had you personally ever operated one here? A I think I did two years ago.

Q I am getting back to this year? A Not this year.

Q Now, you own the car that had the amplifier on it? A That is right.

Q You had charge of it? A That is right.

Q And sat in the front and operated it? A Operated the sound car.

Q Your car and this amplifier? A That is right.

Mr. Noonan: That is all.

Mr. Himelfarb: That is all, Mr. Saia.

WALTER REID, was called as a witness in behalf of the Defendant and having been first duly sworn testified as follows:

Direct examination by Mr. Himelfarb:

Q Mr. Reid, are you an ordained minister? A I am an ordained minister of Jehovah God.

Q Are you a member of the Watchtower Bible & Tract Society? A Yes; I am an authorized representative of the Watchtower Bible & Tract Society. The Society is a charitable organization. It is incorporated in New York.

Mr. Noonan: Now, I object to this.

The Witness: And Pennsylvania.

Mr. Noonan: Just a minute. I was objecting and you continue on.

The Court: I will let him answer that. To get this straight the Court would like to know is this a charitable organization or religious?

The Witness: Charitable organization.

The Court: Not religious?

The Witness: You can call it religious.

The Court: I don't know anything about it. You are the man that is supposed to know.

Q As a minister of Jehovah's witnesses and as a representative of the Watchtower Bible & Tract Society, what kind of work do you do? A I preach the gospel of Jehovah God's Kingdom and Christ Jesus every day of the year.

Q Were you delivering a sermon on September 22nd at Outwater Park over a loudspeaker?

A By Jehovah's grace I did deliver a lecture for about 20 minutes over the loudspeaker when the Police of Lockport come and shut the amplifier off and I had to strain my voice—

Mr. Noonan: Just a second. He answered the question. If the Court please I move to strike out the last part of his answer. Was he doing it there, yes or no.

Mr. Himelfarb: He testified he was doing it.

Mr. Noonan: May I have the last part of his answer stricken out as not responsive? We don't want any elaboration.

The Court: Tell us what the sermon was.

The Witness: I would be glad to. Your Honor, this was advertised throughout the City of Lockport. Everyone in the City and in the City of Buffalo knew about this lecture I was privileged to give.

Mr. Noonan: Can't we get something in the record as to the title?

Mr. Himelfarb: I am.

Q This lecture which was being delivered September 22nd, what is the name of that? A "Christians in the Crucibles." We also brought to the attention of the public "The Gospel. Not unbelievable in our day."

Mr. Noonan: Just a minute. I object to this discourse.

The Court: He can give the titles.

Q Were these handbills displayed throughout the City? A Yes, they were.

Q Advertising the lecture to be given at Out-

water Park on September 22nd? A Yes, sir, by the thousands they were given out.

Mr. Himelfarb: I offer this in evidence.

Mr. Noonan: No objection.

(Handbill referred to was received in evidence and marked Defendant's Exhibit 3)

Q Do you know who gave the lecture on September 15th? A Yes; Willard Wendt.

Q Were you there at the time? A I was.

Q What was the substance of the lecture? A It was exactly as here printed.

Q Read it. A "World's Woes! Why Permitted. With war at an all time high the question fairly screams for an answer. This answer will satisfy. It is God. Public address by W. Wendt."

Q Were these handbills and placards displayed in various parts of the City advertising this lecture? A Yes, they were, by the thousands.

Q Is that the size of this placard? A Yes; all placards are the same size.

Q Handbills were also distributed? A Yes.

Mr. Himelfarb: I offer this placard in evidence.

Mr. Noonan: No objection.

The Witness: This is the placard. I would like you to see them. This is the size of the placard.

Mr. Himelfarb: You mean the handbill.

The Witness: I mean the handbill.

(Placard referred to was received in evidence and marked Defendant's Exhibit 4.)

The Court: Where were these large placards distributed?

The Witness: Not distributed, carried on the street by Jehovah's witnesses on the front and back. This was done throughout the city. They were also carried in the park because many a one has asked us, "Where are you going to be in the park so we can come up and hear your lecture?"

Mr. Noonan: I object to that.

The Court: That may be stricken out.

Q On this lecture you gave on the 22nd of September and this lecture which was given by Mr. Wendt on the 15th of September, after the lectures were over were any handbills distributed, pamphlets? A After the lecture was over there were booklets given away free.

Q Have you those booklets with you? A Yes, I have them. Right behind you there.

Mr. Noonan: I object to this line of testimony, if the Court please. We are trying this man on a violation of an Ordinance which prohibits the use of an amplifier. I think we have gone far enough to show the purpose of this meeting.

Mr. Himelfarb: Your Honor, my contention is if this was a religious discourse that this Ordinance was unconstitutional. I think I have a perfect right to progress. That is my defense. I don't think the evidence is improper.

Mr. Noonan: I am not laying the objection on what the purpose was. I haven't disputed it.

Mr. Himelfarb: We haven't gone far enough.

Mr. Noonan: We are talking about the amplifier.

The Court: Read the titles.

Mr. Himelfarb: Where is the pamphlet distributed after the lectures?

The Court: Just read the title.

The Witness: "End of the Axis Powers. Comfort all that Mourn."

Mr. Noonan: Now, if the Court please, I object to this upon the ground this proposed evidence is incompetent, irrelevant and immaterial and has no bearing on the charge made against this defendant. We are not charging this man with passing out handbills. We are charging him with using an amplifier. There is evidence here they are using it for religious purposes or a public purpose. I think they have gone far enough. If they intend to show all these things it has no relation to this charge.

Mr. Himelfarb: My defense to this entire action is this: If these people were engaged in religious worship or religious lectures, this ordinance which prevented them from using the loudspeaker, is unconstitutional, and I think I have a perfect right to proceed that way and show what they were doing. If I am prevented from showing what they were doing my client hasn't his day in Court.

The Court: Were you using the loudspeaker to advertise the books?

The Witness: These books, your Honor, were given away after the Bible lecture had been delivered, free.

The Court: Were you interfered from distributing the books?

The Witness: Yes.

Q Were you interfered by anybody?

The Witness: Mr. Saia here had a box of these books in the car and he couldn't distribute these books if he was in the jail.

The Court: Wait a minute. He was not in jail for distributing books. He was in jail for a violation of a city ordinance.

The Witness: They were taken with him to the Station House.

The Court: I have allowed enough religious articles.

Mr. Himelfarb: I would like to introduce the titles of the pamphlets distributed free after the lectures. How many have you got?

(Discussion off the record.)

The Witness: "Fighting for Liberty on the Home Front." "Freedom Lovers thrown to the Lions." "Peace! Can It Last?" "Freedom in the New World." "Hope for the Dead." "Future Civilization in a Righteous World under Christ Jesus." This is the last one that follows that: "The Meek Inherit the Earth." This is the last lecture. At the last lecture we gave two booklets away free.

Q Read them. A "Theocracy." The last one I have is, "Be Glad, Ye Nations."

Q Are these pamphlets, the titles which you just read, being distributed by the Watchtower Bible & Tract Society? A Yes.

Q You as one of Jehovah's witnesses are distributing them? A Yes.

Q Have you any authority to act for the Watchtower Bible & Tract Society? A Yes, I have credentials I carry with me all the time.

Q Do your credentials authorize you, as a minister of the gospel of Jehovah's witnesses, to preach the gospel on behalf of the Watchtower Bible & Tract Society? A That is right, it does. I would like to mention, your Honor, at this time this card shows my scriptural authority to speak the gospel.

Mr. Noonan: The card speaks for itself.

Mr. Himelfarb: I offer these books in evidence.

The Court: Received.

(Eight books referred to were received in evidence and marked Defendant's Exhibit 5.)

Mr. Himelfarb: I offer this card in evidence.

The Court: Received.

(Card referred to was received in evidence and marked Defendant's Exhibit 6.)

Q Did the people pay for the pamphlets, Exhibit 5, distributed at the park? A No. These books or booklets have been given away free. No collections taken.

Mr. Noonan: I object to that. He answered the question. Can't we cut this record down?

The Court: You can answer that yes or no.

The Witness: Well, they were given free.

Q Do you receive any compensation or pay from the Watchtower Bible & Tract Society? A We do this work free. We are not—

The Court: Answer the attorney's question as to whether or not you receive any money. Do you receive any money?

The Witness: No wages whatsoever.

Mr. Himelfarb: That is all.

Cross-examination by Mr. Noonan:

Q You receive contributions, don't you? A Yes.

Q In other words, this particular kind of work you make your livelihood off it, don't you? Do you have any other source of revenue? A No. The contributions we obtain for literature goes back to publish more literature.

Q You get paid in order to eat and sleep and pay your bills? A Our expenses, if they are what we can take care of for food and our needs and so forth the Watchtower Bible & Tract Society gives us a minimum.

Q You knew on the 22nd of this month when you were speaking over the microphone which was attached to the amplifier you had no permit, didn't you? You knew that? A I certainly did.

Q And you only had a group in front of you of about how many? A Well, I would make a rough estimate sitting before me I would say there were about 40 or 50 people. There were others in the park that came to hear the lecture.

Q You don't know whether they came to hear

the lecture or not? A I do and I could present them.

Q Do you think all the people in the park came to hear the lecture? A I believe they all did. They are very curious to hear this lecture.

Q You know the park is maintained for the City for the benefit of the people who belong to Jehovah's witnesses and who don't belong? A Exactly.

Q You answer me and we will get along nice. This arrangement in which you were using the amplifier is in the section where they have benches and seats where people eat and lunch, which is the scenic portion of that park? A Is on the north side of Price Avenue.

Q It is a nice quiet section in there? A Lovely spot.

Q Where children play and they have bathing places a considerable distance away? A That is right.

Q You picked out for the point of your amplifier this particular spot? A That is right.

Q In your opinion it was the best spot to reach the people in the park? A That is right.

Q And you set up this amplifier which had horns on top of it, and which would carry the voice a considerable distance, didn't you? A As far as it could be carried.

Q And you intended that these amplifiers would carry the voice as far as could be? A Everyone that came to the park to hear we hoped would hear.

Q You hoped those who were not members of Jehovah's witnesses would get the message? A That is right.

Mr. Noonan: That is all I want.

The Witness. I hope they get the day in this Court—

Mr. Himelfarb: This is off the record.

The Court: This is off the record.

(Discussion off the record.)

Redirect examination by Mr. Himelfarb:

Q Do you know how far this loudspeaker could reach distinctly to the people in the park? A Our engineer told me—

Mr. Noonan: That is object to as hearsay.

The Court: Is the engineer the defendant?

The Witness: No. He is with us.

The Court: You can't answer it.

Mr. Himelfarb: We will have the engineer answer that then.

Q Are you an ordained minister? A I am an ordained minister of Jehovah God under the 61st Chapter of Isaiah.

Mr. Noonan: I move to strike it out.

Mr. Himelfarb: I don't see why it should be stricken out.

Mr. Noonan: He asked the question; Is he an ordained minister? I think the answer was yes.

The Court: He has already answered that once.

Q You were ordained by whom?

Mr. Noonan: He introduced the card in evidence.

The Witness: I am ordained by the Father of Christ Jesus.

Mr. Noonan: I object to that as not proper and not responsive. He introduced in evidence the card which shows he is an ordained minister. The card speaks for itself. Will the Reporter read the direct examination evidence back?

Mr. Himelfarb: I asked who he was ordained by.

The Court: I think you have already asked him.

Mr. Himelfarb: At this time I asked him who he was ordained by. I think he should be given an opportunity to answer.

Mr. Noonan: Has he got the card? That speaks for itself.

Mr. Himelfarb: That is his authority.

Mr. Noonan: From the Bible & Tract Society.

Mr. Himelfarb: That card, your Honor, gives him authority to act in behalf of the Watchtower Bible & Tract Society, but it does not show who he was ordained by. I have a perfect right to ask who he was ordained by. As a minister of the gospel, a minister of the gospel is ordained by someone. I think that question is proper.

Mr. Noonan: Ordained by some function.

The Witness: Would you permit me at this time—

Mr. Himelfarb: Answer the question: Who were you ordained by?

A I am ordained by Jehovah God the Father of

Christ Jesus. When Jesus was only about 30 years old—

Mr. Noonan: I object to that.

The Witness: He was at that time—

Mr. Noonan: Just a second here. I want my objection recorded. I object to this. He says he was ordained by Jehovah God or by Jehovah, whoever it was. That is an answer.

Mr. Himelfarb: All right.

The Court: I think that is sufficient.

Mr. Noonan: Whatever he said.

Q I want to ask you another question: Now, preaching the gospel of Jehovah God are you doing the same work that Jesus Christ did? A Exactly the same work.

Mr. Noonan: I object to that.

The Court: Let us confine that to the 15th and 22nd he is preaching the gospel.

Q By that I mean, I will confine it to the 15th, on the lecture of the 15th of September and the lecture of the 22nd—

Mr. Noonan: Now, I object to the form of that question in that he or anybody else has to say who they are doing it for, except in his official capacity as a member of this religious sect. It is for the Court to determine, not for him to state.

Mr. Himelfarb: He has a perfect right to give his opinion who he is doing it for.

Mr. Noonan: I can give it.

Mr. Himelfarb: Sure you can. Thank the Lord we have a free country.

The Court: Go ahead.

Q This work of Jehovah's witnesses and the Watchtower Bible and Tract Society on this lecture given on September 15th and 22nd, do you contend this lecture was given, and do you believe you are following the footsteps of Jesus Christ? A That I do thoroughly.

Mr. Himelfarb: That is all.

Mr. Noonan: I have no more questions, your Honor. I think I asked you, I don't know whether I did or not, you had no permit?

The Witness: The permit ran out. I could tell you more.

Mr. Noonan: Oh, no. We have heard plenty about the permit. Thank you.

JOSEPH STRALKER, was called as a witness in behalf of the Defendant and having been first duly sworn testified as follows:

Direct examination by Mr. Himelfarb:

Q What is your occupation? A Radio technician and sound technician.

Q Have you examined Mr. Saia's loudspeaker he has on his automobile? A I have examined it and serviced it.

Q How long have you serviced his loudspeaker? A The last time I serviced it was on August 8th.

Q And how far would you say you could hear a lecture being given on that particular loudspeaker distinctly?

Mr. Noonan: Just a second. He has to qualify that, under certain conditions, where the loudspeaker was located and so forth.

Q Providing it is in a park where it is nice and quiet? Does that satisfy you?

Mr. Noonan: Yes.

Q Providing it is in Outwater Park and there is no disturbance or sound or any matter of that kind?

The Court: Have you been in Outwater Park?

Mr. Noonan: That is the last time he serviced it.

Q Have you ever been in Outwater Park in Lockport?

The Witness: Once.

Mr. Noonan: When was that? Before or after this?

The Witness: That was after.

Mr. Noonan: When? What particular date?

The Witness: September 1st.

Q Could you tell of your acquaintance with that particular loudspeaker and your observation of its mechanism, how far you could hear that loudspeaker in Outwater Park?

Mr. Noonan: I object to that as not

showing the facts and circumstances on the day of these two violations.

The Court: You will have to put a hypothetical question with your facts. Is he an expert?

Mr. Himelfarb: Yes.

The Court: You will have to lay a hypothetical question.

Mr. Noonan: You have to qualify him as an expert.

Q What is your occupation? A I am a radio technician at the Colonial Radio Corporation.

Q Do you have any experience with loudspeakers? A Yes.

Q Do you repair loudspeakers? A I do.

Q How long have you been repairing and servicing loudspeakers? A For the past 15 years.

Q Have you done work on Mr. Saia's loudspeaker? A I have.

Mr. Noonan: Might I ask him a few questions?

Mr. Himelfarb: I am not through with him.

Mr. Noonan: Before you put the hypothetical question. I doubt his qualifications.

Mr. Himelfarb: You are not going to tell me how to run my lawsuit.

Mr. Noonan: I am not trying to try it.

Mr. Himelfarb: You are not going to run it either.

Mr. Noonan: I am not trying to.

The Court: Go ahead, counselor.

Q Have you repaired and serviced many loudspeakers? A I have.

Q Do you know the name of Mr. Saia's loudspeaker? A Well, it really has no name. It is a custom-built amplifier.

Q Are you acquainted or not with how many feet Mr. Saia's loudspeaker could be heard in Outwater Park? A If the weather conditions are good—

Q What do you mean by "weather conditions"? A Well, if it isn't too windy or it isn't, as you would say, the downcast isn't there you could hear anywhere 250 feet to 300 feet.

The Court: With the volume all the way open?

The Witness: Yes, with full power output.

Q Could you hear that very same loudspeaker 500 or 600 feet away? A I would say it wouldn't be very audible at 500 feet.

Q Could you distinguish the words? A No, you couldn't.

Q How far could you be away from the loudspeaker to distinguish words? A Anywhere between 250 feet and 300 feet.

Q If the weather— A Weather conditions are good.

Q If the weather conditions are bad? A The best you could bet was around 200 feet.

Mr. Himelfarb: You may ask.

Cross-examination by Mr. Noonan:

Q In your work with the Colonial Radio Corporation does your work consist of loudspeakers and radios? A I am working in the laboratory. It is in connection with sound amplifying work.

Q What sound amplifiers do Colonial make other than radio? A They make sound amplifiers for their own purposes.

Q None for public purposes? A No.

Q They sell nothing to the public? A No.

Q Did your factory make this amplifier on Mr. Saia's car? A No.

Q Now, is it not a fact if an amplifier is being used the wind would have a tendency to carry the words off the amplifier if the wind was blowing more than it would carry sound on a still day when there wasn't any wind? A The speakers pointed toward it would carry the sound in the opposite direction.

Q The amplifiers on this machine is faced in such a way the wind goes with it, the wind is behind it, it will carry the sound farther naturally?

Mr. Himelfarb: Are you answering or is he answering?

Mr. Noonan: I am asking him. He is an expert.

The Witness: Like I previously mentioned you get 300 feet and no disturbances you get understandable speech.

The Court: If the wind was blowing the same direction how far could you hear?

The Witness: The weather condition was good, that is included.

The Court: How far on a still day?

The Witness: I would say this was—take today for instance is good weather for amplifier work.

The Court: How far would it be able to go the one he used?

The Witness: 300 feet.

The Court: If the wind was blowing in the same direction how far could you hear it?

The Witness: 300 feet is the most.

The Court: Regardless of weather the wind was blowing or a still day?

The Witness: That is true.

Q You mean to tell me if the wind was blowing in the direction the voice was coming out of the amplifier it wouldn't carry farther than if the wind was not blowing? A The wind affects the sound.

Q I am talking about the sound. The sound wouldn't be better? A The wind doesn't help it any.

Q Would the sound be heard farther? Would it help any if the wind was carrying it? A No.

Q Would it be heard less if the wind was carrying the sound in the direction in which the wind was blowing? A The wind distorts the sound.

Q You mean cuts down or carries it farther? A Cuts it down and distributes it over a different area.

Q It distributes it east and west? A Depends on which way the wind is blowing.

Q It would distribute it over the area differently than if there wasn't any wind? A Well, it depends. Whatever way the loudspeaker horns was pointed.

Q The density would be heavier in that direction? A It would be.

Q Have you had any experiences at all other than with Mr. Saia's? A I have.

Q Just a minute until I conclude the question.

Of examining any other loudspeakers? A Yes. I also have built complete sound systems.

Q Built them? A Yes.

Q How many? A I would say a dozen of them.

Q The last time you serviced Mr. Saia's apparatus was on— A August 30th.

Q When did you last see his apparatus if you have seen it since? A I haven't seen it.

Q You haven't fixed it since? A No.

Q You were not in Outwater Park on September 15th or 22nd? A No.

Q Were you in Court and heard the testimony of the various witnesses as to the distance away from this amplifier they heard the sound? A You mean today?

Q Yes. A Yes.

Q Do you think they are telling the truth or non-truth? A That is their opinion. I wouldn't be able to say whether they are telling the truth or not.

Q You were not there? A I weren't there.

Q You had nothing to do with the amplifier on those days? A No.

Mr. Noonan: That is all.

Redirect examination by Mr. Himelfarb:

Q Could you hear that amplifier 600 feet? A Yes, I have checked it for distance.

Q What is the farthest distance under favorable conditions?

Mr. Noonan: You got to confine yourself to the times of the occurrences. I think you have to do that.

Mr. Himelfarb: An expert testifies to the

mechanism of an antomobile, he testifies when the last time he examined it was and his personal observations and knowledge of that particular machine. He has a perfect right to testify to what he knows. It isn't necessary for him to be there at that particular time.

The Court: Ask him the question.

Q Under the best favorable weather conditions could you hear that amplifier 500 or 600 feet away?

Mr. Noonan: In his opinion.

The Witness: No.

Q In your opinion? A Maybe you could hear it; it would be barely audible.

The Court: Answer the question. Could you hear it or not?

The Witness: You can't really answer that. From a technician's standpoint it is barely audible or barely faint. I wouldn't answer it any other way.

Mr. Himelfarb: That is all.

Mr. Noonan: That is all.

(Witness leaves the witness stand.)

Mr. Noonan: Do you belong to the Jehovah's witnesses?

The Witness: That is a question I don't have to answer. I am off the stand.

Mr. Noonan: He is a witness.

The Witness: I am off the stand.

Mr. Himelfarb: You can answer yes or no.

The Witness: Yes.

Mr. Noonan: How long have you belonged?

The Witness: For about 12 years.

Mr. Noonan: Are you an ordained minister?

The Witness: I haven't been active.

Mr. Noonan: Do you have an ordained minister's card?

The Witness: No, I haven't.

Mr. Noonan: Did you ever have one?

The Witness: At one time I did.

Mr. Noonan: That is all.

Mr. Himelfarb: The defendant rests.

Mr. Noonan: I think I will rest, too, if the Court please.

Mr. Himelfarb: At this time I would like to make the following motions and I would like to submit authorities:

I wish to move for a dismissal of the information on the grounds that the undisputed evidence shows that the defendant is not guilty as charged in the complaint. That is number one.

Two: The prosecution has wholly failed to prove the defendant guilty as charged in the complaint.

Third: The evidence is insufficient to support a conviction.

Fourth: The defendant is an ordained minister preaching the gospel of God's kingdom by delivering a Bible sermon and using a sound-reproducing device to an orderly and lawful assembly and therefore the Ordinance as properly construed does not apply to the activity of the defendant.

Fifth: The undisputed evidence shows that the sound-reproducing device was stationary sound equipment and was not a sound truck or like device equipped with sound amplifiers as contemplated by the Ordinance.

Sixth: The Ordinance when properly construed, does not apply to the use made by defendant of the stationary sound reproducing device at a public meeting where the people were assembled for the worship of Almighty God, and the defendant was using the sound device for the purpose of amplifying his sermon for the benefit of those assembled.

Seventh: The Ordinance when properly construed and applied, is confined to the commercial use of sound trucks or like devices or sound-reproducing devices used for commercial purposes and commercial advertising. The Ordinance does not include the use of a sound-reproducing

device at a private or public assembly where people are gathered for noncommercial purposes, whether political, religious or otherwise. Accordingly the activity of the defendant does not fall within the ambit of the Ordinance and therefore he was not required a license as stipulated by the Ordinance in question.

Eighth: The Ordinance when properly construed and applied, does not include the use of sound-reproducing devices of any kind or character, for any purpose on private property, but is confined exclusively to the use of such devices upon the public streets. Since this defendant was not using the device upon a public street the Ordinance does not apply.

Ninth: If the Ordinance is construed and applied to cover the defendant's activity, then it unlawfully abridges and denies defendant's right of freedom of conscience, freedom to worship Almighty God, freedom of speech, press and assembly, contrary to the United States Constitution, First and Fourteenth Amendments, and the Constitution of the State of New York.

Tenth: If the Ordinance is construed and applied to cover the defendant's activity, then it unlawfully abridges and denies defendant's right of freedom of conscience, freedom to worship Almighty God, freedom of speech, press and assembly,

66 contrary to the declaration of rights of the State of New York and the Constitution of the United States.

I would like to call the Court's attention also to *Lovell* v. *City of Griffin*, 303 United States Reports, 444.

I would like to call the attention of the Court to *Murdock* v. *Pennsylvania*, reported in 319 United States Reports at page 105.

67

I would like to call the Court's attention to the *People* v. *Barber*, 289 New York at page 378.

I would like to call the Court's attention to *Hague* v. *Committee for Industrial Organization*, reported in 307 United States Reports at page 496.

I would like to call to the Court's attention *Schneider* v. *State and Town of Irvington*, reported in 308 United States Reports at page 147.

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The Court: Motion denied. For your information the Court has already read all those cases.

I will reserve decision until next Friday morning at 10 o'clock.

(Whereupon an adjournment was taken until Friday, October 4, 1946, 10 A.M.)

Decision of County Court

STATE OF NEW YORK
COUNTY COURT—NIAGARA COUNTY

(Same Title)

APPEARANCES:

HON. JOHN S. MARSH, Niagara County District Attorney (William E. Miller, Esq., Assistant District Attorney, of counsel), for the People.

JULIUS HIMELFARB, ESQ., (Hayden C. Covington, Esq., of counsel) for defendant-appellant.

KNOWLES, N. C. J.

This is an appeal from each of four several judgments rendered in the Police Court of the City of Lockport on September 1st, 1946, September 8th, 1946, September 15th, 1946, and September 22nd, 1946, by which the defendant-appellant, Samuel Saia, was, in each instance, convicted of a violation of Sections 2 and 3 of City of Lockport Penal Ordinance Number 38.

The judgment of the lower court in each instance should be, and hereby is, affirmed upon the facts and the law.

Order may be made and entered accordingly.

Dated March 17th, 1947.

72 **Judgment**

STATE OF NEW YORK
COUNTY COURT—COUNTY OF NIAGARA

(Same Title)

The above named defendant having appealed to this Court from judgments of conviction rendered against the defendant for violations of Penal Ordinance No. 38, Sections 2 and 3 of the City of Lockport, New York, rendered by the Police Court of the City of Lockport, Niagara
73 County, New York, on September 11, 1946, in which judgment the defendant was fined $15.00 on each of two charges alleging two separate violations of the above mentioned Penal Ordinance, and from a judgment rendered by the said Police Court on October 4, 1946, in which the defendant was found guilty on two charges violating the above said Ordinance, and in which judgment the defendant was sentenced to serve thirty days in the Niagara County Jail for each of the said violations, and, in addition thereto, was fined $50.00 on each of the said violations and
74 ordered committed to jail upon default in payment of said fine, to be served at the rate of one day for every dollar of the fine remaining unpaid, and the appeal having been duly argued, William E. Miller, Esq., Assistant District Attorney, appearing for the Respondent, and Julius Himelfarb, Esq., appearing for the Defendant-Appellant, Hayden C. Covington, Esq., of Counsel, it is hereby

ORDERED, ADJUDGED and DECREED that the said judgments of conviction of the said Police

Court of the City of Lockport, New York, should be and is hereby affirmed in all respects upon the facts and the law, and it is further

ORDERED, ADJUDGED and DECREED that this Order and judgment be and the same hereby is made the order and judgment of this Court, and it is further

ORDERED, ADJUDGED and DECREED that the Sheriff of Niagara County proceed to execute this judgment and take the said Samuel Saia into his custody until the judgment of this Court is satisfied.

RAYMOND A. KNOWLES
Niagara County Judge

ENTERED in Niagara County Clerk's Office April 1st, 1947.
JESSE READ
Niagara County Clerk
By
Deputy County Clerk

78 **Stipulation**

NEW YORK COURT OF APPEALS

(Same Title)

It is hereby stipulated, subject to the approval of the Court of Appeals, that the four causes be consolidated for oral argument and submission and that one printed joint record on appeal containing the papers and proceedings in all four cases be prepared and filed and that the four
79 causes be jointly argued and submitted before the Court of Appeals.

WILLIAM E. MILLER
Ass't District Attorney
Niagara County, New York

HAYDEN C. COVINGTON
Of Counsel
for Defendant-Appellant

80

April 30, 1947.

Stipulation

STATE OF NEW YORK
COUNTY COURT—NIAGARA COUNTY

(Same Title)

IT IS HEREBY STIPULATED AND AGREED that the time for filing the printed case with the Clerk of the Court of Appeals be and hereby is extended to August 1, 1947.

Dated, May 2, 1947.

WILLIAM E. MILLER
Assistant District Attorney
Niagara County, New York
Attorney for the People

HAYDEN C. COVINGTON
117 Adams Street
Brooklyn, New York
Of Counsel for Appellant

784 **Statement that Case Contains All the Evidence**

The foregoing contains all the evidence, exceptions and proceedings had and taken on the trial of this action.

Affidavit of No Other Opinion

State of New York }
County of Kings } ss.:

785

HAYDEN C. COVINGTON, being duly sworn, deposes and says that he is of counsel and associated with Julius Himelfarb, attorney of record, for the defendant-appellant herein; that he is familiar with all the proceedings had in this action; and that no other opinion has been rendered by the court below in this case, except that which is printed on page 257, *supra*.

HAYDEN C. COVINGTON

786

Sworn to before me this
day of July, 1947.

WILLIAM K. JACKSON
Notary Public, State of New York
Residing in Kings County
Kings Co. Clk's No. 134, Reg. No. 62-J-9
Commission Expires March 30, 1949

Stipulation and Order Settling and Filing Case

IT IS HEREBY STIPULATED that the foregoing case contains all the evidence given upon the trial of this action and that the same be settled and ordered on file in the office of the Clerk of the County of Niagara.

Dated, Lockport, New York, July , 1947.

JULIUS HIMELFARB
Attorney for Defendant-Appellant

WILLIAM E. MILLER
Assistant District Attorney
Attorney for the People

Upon the above stipulation, the foregoing case on appeal containing all the evidence is hereby settled and ordered on file in the office of the Clerk of the County of Niagara.

Dated, Lockport, New York, July , 1947.

County Judge of Niagara County

790 **Stipulation Waiving Certification**

IT IS HEREBY STIPULATED that the foregoing consists of true and correct copies of the notice of appeal, the judgment roll and case and exceptions as settled, and the whole thereof, now on file in the office of the Clerk of the County of Niagara, and certification thereof is hereby waived.

Dated, Lockport, New York, July , 1947.

791 JULIUS HIMELFARB
Attorney for Defendant-Appellant

WILLIAM E. MILLER
Assistant District Attorney
Attorney for the People

Order Filing Case in Court of Appeals

Pursuant to law, the foregoing printed case
792 is ordered filed in the office of the Clerk of the Court of Appeals.

Dated, Lockport, New York, July , 1947.

County Judge of Niagara County

IN COURT OF APPEALS OF NEW YORK

STATE OF NEW YORK, SS:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 13th day of November in the year of our Lord one thousand nine hundred and forty-seven, before the Judges of said Court.

Witness, The Hon. John T. Loughran, Chief Judge, Presiding.

John Ludden, Clerk.

REMITTITUR—November 14, 1947

PEOPLE, ETC., Respondent,

ag'st.

SAMUEL SAIA, Appellant

Be it Remembered, That on the 2nd day of August in the year of our Lord one thousand nine hundred and forty-seven, Samuel Saia, the appellant in these causes, came here unto the Court of Appeals, by Julius Himelfarb, his attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the County Court, Niagara County. And People, etc., the respondent in said causes, afterwards appeared in said Court of Appeals by John S. Marsh, District Attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard these causes argued by Mr. Hayden C. Covington of counsel for the appellant, and by Mr. William E. Miller of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment appealed from herein be and the same hereby is affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the County Court, Niagara County, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said

Court of Appeals remitted into the County Court, Niagara County, before the Judge thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said County Court before the Judge thereof, etc.

John Ludden, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office, Albany, November 13, 1947.

Abany, November 13, 1947.

Clerk's Certificate to foregoing paper omitted in printing.

IN COURT OF APPEALS OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK

against

SAMUEL SAIA

PETITION FOR APPEAL

STATEMENT, ASSIGNMENTS OF ERROR AND PRAYER FOR REVERSAL

PETITION FOR APPEAL

Considering himself aggrieved by the final decision of the Court of Appeals of the State of New York in the above entitled causes, the appellant herein, Samuel Saia, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order allowing same and fixing the amount of the bond thereon.

STATEMENT

Each of these cases is one in which the validity of state legislation is drawn in question, to wit, Penal Ordinance No. 38 of the City of Lockport, New York, Sections 2 and 3, reading as follows:

> Section 2. Radio devices, etc. It shall be unlawful for any person to maintain and operate in any building, or any premises or on any automobile, motor truck or other motor vehicle, any radio device,

mechanical device, or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of the travelers upon any street or public places or of persons in neighboring premises.

Section 3. Exception. Public dissemination, through radio, loud speaker of items of news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission from the Chief of Police.

Said ordinance was in force and effect at the time of the offenses alleged in the informations. It is drawn in question upon the ground that it is repugnant to the First and Fourteenth Amendments to the United States Constitution.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2) and 28 U. S. C. §§ 344 and 354, and Section 237 (a) of the Judicial Code, the appellant respectfully shows this court that each of these cases is one in which, under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C. § 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

Assignments of Error

Now comes the appellant in the above causes and files herewith, together with his petition for appeal, these assignments of error and says that they are errors committed by this court and the courts below in the record and proceedings of the above entitled causes, and for the purpose of having the same reviewed in the United States Supreme Court says that this court erred in affirming the judgments of conviction entered against appellant by the Police Court of the City of Lockport because

1. The ordinance, insofar as it has been construed and applied by this court and the courts below, constitutes an unreasonable abridgment of the rights of the appellant to

freedom of speech, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

(a) The use to which the public park has been put by the appellant is similar to that of orthodox worshippers and preachers in church buildings where people worship and thus the constitutional limitations applicable to ordinances of municipal corporations insofar as they affect worship by people in buildings likewise apply to the use of a sound device by appellant in connection with preaching in these cases.

(b) The ordinance is unconstitutional insofar as it has been construed and applied by this court and the courts below because it discriminates arbitrarily against Jehovah's witnesses and in favor of orthodox religions in respect to the use of sound machines and amplifying devices incidental to providing them with spiritual instruction, guidance and training through public preaching in the park.

(c) The statute in question is unconstitutional insofar as it has been construed and applied by this court and the courts below because there is no reasonable relation between the evil aimed at and the means employed to reach it under the circumstances of these cases.

2. As it has been construed and applied by this court and the courts below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, assembly and worship, the ordinance is presumptively unconstitutional, and which presumption the State has failed to overcome by a showing that the enforcement of the ordinance is reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of a state to regulate use of a public park.

3. The ordinance is unconstitutional on its face and as construed and applied by this court and the courts below in that it is not a regulatory law as to the time, place and manner of use of sound devices, but is prohibitory and provides for censorship, conferring arbitrary discretionary powers upon the Chief of Police, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

PRAYER FOR REVERSAL

For and on account of the above errors, the appellant, Samuel Saia, prays that the said judgments of the Police Court of the City of Lockport, Niagara County Court and the Court of Appeals of the State of New York hereinbefore described in the above entitled causes be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of appellant and for his costs.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York, Attorney for Appellant.

Clerk's Certificate to foregoing paper omitted in printing.

(IN COURT OF APPEALS OF NEW YORK

Caption omitted

ORDER ALLOWING APPEAL

Appellant, Samuel Saia, in the above entitled cause has prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment and order rendered by the Court of Appeals of New York on November 13, 1947, affirming the judgment of the County Court of Niagara County, which affirmed four convictions, adjudged by the Police Court of the City of Lockport, of appellant under charges of violations of an ordinance of the City of Lockport.

It appearing that appellant, in his motions and argument of counsel made in his behalf in this cause, attacked the ordinance in question on the grounds, as contended by him that it was void and that as construed and applied it was violative of the fundamental freedoms guaranteed and secured by the First and Fourteenth Amendments to the Constitution of the United States, all of which contentions were overruled; and

It appearing that appellant has presented and filed his petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from the date of said judgment of the Court of Appeals of New York became final, and it further appearing that the said Court of Appeals is the court of last

resort in New York in which a decision can be had in this cause, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

It is now here ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Judgment and Order of the Court of Appeals of New York in the aforesaid cause as provided by law, and

It is further ordered that the Clerk of the County Court of Niagara County shall prepare and certify a transcript of the record, proceedings and judgment in said cause, together with all exhibits in their original form and the judgment rendered by the Court of Appeals in connection with the proceedings in this cause, including a copy of each of the papers on this appeal to the Supreme Court of the United States, and transmit the same to the Clerk of the Supreme Court of the United States so that he shall have the same in said court within twenty (20) days from this date, and

It is further ordered that a bond on appeal for appearance and costs on appeal be fixed in the sum of Five Hundred ($500) Dollars and appellant having presented an undertaking conditioned as required by law in the sum of Five Hundred ($500) Dollars executed by good and sufficient sureties, it is further ordered that such undertaking or bond be and the same is hereby approved and ordered filed with the record in the County Court.

It is further ordered that the satisfaction of the sentences and fines imposed against appellant be stayed pending a final disposition of this appeal and until the return of the mandate from the Supreme Court of the United States.

Done at Kingston, New York, on this 8th day of December, 1947.

John T. Loughran, Chief Judge, Court of Appeals, State of New York.

Clerk's Certificate to foregoing paper omitted in printing.

Bond on appeal for $400 approved and filed Dec. 8, 1947, omitted in printing.

Citation in usual form omitted in printing.

In Court of Appeals of New York

Caption omitted

Praecipe for Transcript of the Record

To the Clerk of the County Court of Niagara County:

Please incorporate the following documents into the transcript of the record on appeal to the Supreme Court of the United States, which appeal has been heretofore prayed for and allowed from the final judgment in the above entitled action, to wit:

1. Caption paper for transcript showing style and number of cause, term of court, etc.

2. The entire printed record and all papers on appeal to the Court of Appeals.

3. Remittitur which includes the (a) decision or opinion and (b) judgment of the Court of Appeals affirming judgment and conviction.

4. Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error, and Prayer for Reversal.

5. Jurisdictional Statement.

6. Bond for costs, etc., on appeal to the Supreme Court of the United States.

7. Citation.

8. Order allowing appeal to the Supreme Court of the United States.

9. Statement of Points to be Relied Upon.

10. Acknowledgment of Service by counsel for appellee.

11. This praecipe and proof of service thereof.

Dated at Brooklyn, New York, December 8, 1947.

Hayden C. Covington, Attorney for Appellant. Office & P. O. Address: 117 Adams Street, Brooklyn 1, New York.

Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 504

SAMUEL SAIA, Appellant,

vs.

THE PEOPLE OF THE STATE OF NEW YORK

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

February 2, 1948.

(4790)

[fol. 273] NEW YORK COURT OF APPEALS

PEOPLE OF THE STATE OF NEW YORK

against

SAMUEL SAIA

On Appeal to the Supreme Court of the United States

STATEMENT OF POINTS RELIED ON—Filed December 30, 1947

Comes now appellant, Samuel Saia, in the above entitled cause and states that the points upon which he intends to rely in the Supreme Court of the United States in this cause are as follows:

1. The ordinance, insofar as it has been construed and applied by the court below, constitutes an unreasonable abridgment of the rights of appellant to freedom of speech, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

(a) The use to which the park has been put by the appellant is similar to that of orthodox worshippers and preachers in church buildings where people worship and thus the constitutional limitations applicable to ordinances of municipal corporations insofar as they affect worship by people in buildings likewise apply to the preaching by appellant in this case.

(b) The ordinance is unconstitutional insofar as it has been construed and applied by the court below because it discriminates arbitrarily against Jehovah's witnesses [fol. 274] and in favor of orthodox religions in respect to using sound devices in public parks.

(c) The statute in question is unconstitutional insofar as it has been construed and applied by the court below because there is no reasonable relation between the evil aimed at and the means employed to reach it under the circumstances of this case.

2. As it has been construed and applied by the courts below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, assembly and worship, the ordinance is presumptively unconstitutional,

and which presumption the State has failed to overcome by a showing that the ordinance is reasonable and a necessary means to prevent a clear, present and substantial danger to the public peace and order.

3. The ordinance is unconstitutional on its face and as construed and applied by the courts below in that it is not a regulatory law as to time, place and manner of use of sound devices, but is prohibitory and provides for censorship, conferring arbitrary discretion, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

For the above reasons the judgment of the Court of Appeals should be reversed.

Hayden C. Covington, Attorney for Appellant, Office & P. O. Address: 117 Adams Street, Brooklyn 1, New York. (Seal.)

FILE COPY

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DEC 30 1947
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 504

SAMUEL SAIA,

Appellant,

vs.

PEOPLE OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

STATEMENT AS TO JURISDICTION

HAYDEN C. COVINGTON,
Counsel for Appellant.

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Penal Ordinance No. 38 of the City of Lockport 2

NEW YORK COURT OF APPEALS

PEOPLE OF THE STATE OF NEW YORK

vs.

SAMUEL SAIA

[Four Cases Consolidated on Appeal]

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

JURISDICTIONAL STATEMENT

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellant files his statement disclosing the basis upon which he contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. These cases present a state of facts within the jurisdiction of this court.

Legislation Drawn in Question

These cases draw into question the validity of state legislation, to wit, Penal Ordinance No. 38 of the City of Lockport, reading as follows:

> Section 2. Radio devices, etc. It shall be unlawful for any person to maintain and operate in any building, or any premises or on any automobile, motor truck or other motor vehicle, any radio device, mechanical device, or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of the travelers upon any street or public places or of persons in neighboring premises.
>
> Section 3. Exception. Public dissemination, through radio, loud speaker of items of news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission from the Chief of Police.

Timeliness

The judgment of the Court of Appeals (affirming the judgments of the County Court of Niagara County and of the Police Court of Lockport assessing a fine of Fifteen ($15) Dollars or serve thirty (30) days in jail on each of the first two charges and fining him Fifty ($50.00) Dollars on each of the last two charges together with a thirty-day jail sentence) was rendered and entered on the 13th day of November, 1947, whereupon the judgments of conviction became final. This appeal is duly presented and filed within three months from the date such judgment of the Court of Appeals of the State of New York became final and is therefore timely.

Opinion

The Court of Appeals did not write an opinion. The decision of the Court of Appeals is not yet reported. It is set out in the record and is appended hereto as Appendix A of the jurisdictional statement. The County Court of Niagara County wrote no opinion. The decision of the County Court appears in the printed record [257].[1] The Police Court of Lockport wrote two separate opinions. The first opinion appears in the record [22-23]. The second opinion also appears in the record, in which the law relied upon is analyzed [33-39]. Apparently the Court of Appeals and the County Court of Niagara County adopted the reasons of the Police Court of Lockport.

Statement of the Case

These criminal proceedings were instituted by informations in the Police Court of the City of Lockport. Each of the four informations charged that Samuel Saia violated the above-named ordinance on September 1, September 8, September 15 and September 22, 1946 [19-21, 31-33]. Each information is identical with respect to the alleged violation. In each information it is charged that Samuel Saia "did unlawfully, wrongfully, wilfully, feloniously and against the statute in such case made and provided violate Lockport City Penal Ordinance No. 38: . . . in that said defendant did maintain and operate on an automobile a radio device and loud speaker whereby the sound therefrom was cast directly upon the streets and public places in said City of Lockport, N. Y. to wit: Outwater Park. Such radio device was maintained for the purpose of attracting the attention of the passing public and the people in said park and the sounds

---

[1] Figures appearing herein within brackets denote pages of the printed record.

coming therefrom could be heard to the annoyance or inconvenience of travelers upon the street and the users of said public park and neighboring premises.

And that said defendant did violate said ordinance in that he failed to obtain a permit or permission from the Chief of Police."[2]

The first two informations were called for trial and heard together on Tuesday, September 10, 1946, in the Police Court of the City of Lockport [41]. Upon the call of the cases the appellant pleaded not guilty [41]. He announced ready for trial. Not being represented by an attorney, appellant was permitted by the court to have a friend assist him by questioning him during the trial of the two informations [41-42]. At the close of the People's case a motion to dismiss both informations and render a judgment of acquittal was filed and presented [69]. On denial of the motion exception was taken and allowed [70]. At the close of all the evidence another motion for dismissal and judgment of acquittal was made and filed [102]. The court reserved decision until the following day. On September 11, 1946, the court overruled the motion and found appellant guilty as charged in each information [103-105]. Saia was fined $15 on each charge and on default in payment of such fine he was sentenced to the Niagara County Jail for thirty days [105]. He duly appealed, in the manner required by law, on September 13, 1946 [105].

The second two informations were called for trial on September 28, 1946 [107]. On that day they were heard together in the Police Court of the City of Lockport [108]. Upon the call of the cases the appellant pleaded not guilty and announced ready for trial [107]. Upon the call of these

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[2] The two later informations differ slightly from the two original informations, in that "subdivision 3" of the ordinance is specified, as well as "subdivision 2".

two informations for trial appellant was represented by counsel [107]. At the close of the People's case a motion to dismiss both informations and render a judgment of acquittal was filed and presented [203-204]. At the close of all the evidence another motion for dismissal and judgment of acquittal was made and filed [253-256]. That motion was denied and the court reserved decision in the cases until Friday, October 4, 1946 [256]. On that day the court found the appellant guilty as charged in each information and sentenced the appellant to serve thirty days under each information in the Niagara County Jail, and in addition thereto fined him $50 on each charge, ordering the appellant committed to jail upon default in payment of said fine, to be served at the rate of one day for every dollar of the fines unpaid [38-40].

The convictions in these four cases were duly appealed to the County Court [14, 26]. Upon the appeal to the County Court the judgment of the Police Court in each case was affirmed [259-259]. Thereafter application was duly made for leave to appeal to the Court of Appeals of the State of New York [7-11]. Leave to appeal was granted [4-5]. Notice of appeal was duly served and filed [5-6]. After argument, submission and deliberation the Court of Appeals affirmed on November 13, 1947.

Facts

Outwater Park is a public park situated in the City of Lockport, New York [110]. The park was granted to the city for use by the public by deed duly recorded [111-112]. The park is large, comprising about 28 acres [121]. It has a 1600-foot frontage on one of the public streets of Lockport, and a depth ranging from 250 to 400 feet [111]. The park is beautifully landscaped and studded with trees [44, 47-48, 64, 65, 121]. Various facilities are situated in the

park, which is primarily devoted to recreation and other public purposes [64-65, 110, 116, 122]. It has a wading pool and playground for children [117, 364]. Part of the park is equipped for picnic parties, having tables and benches and stationary fireplaces [110, 116]. In addition thereto there is a baseball diamond and places dedicated for horseshoe pitching [122]. Also there are lawn bowling courts [122]. Throughout the park are suitable benches for rest, recreation and assembly of people who might use the park for public purposes [110, 121]. Adjacent to the park is a baseball field and stadium surrounded by a fence six feet high [64, 65, 126]. The park and ball field and stadium are separated by a two-lane park-divided highway [64, 110].

Samuel Saia, the appellant, is a resident of Buffalo, New York [70, 232]. During each week he is employed by the City of Buffalo [232]. Being one of Jehovah's Witnesses, in addition to his secular work, he preaches the gospel as an ordained minister of the Watch Tower Bible & Tract Society [72, 228-229]. Walter M. Hammond is also one of Jehovah's Witnesses, being in charge of the congregation located at Lockport [80, 214-215]. Associated with Hammond and others of Jehovah's Witnesses in Lockport is Walter A. Reid, another of Jehovah's Witnesses, an ordained minister [223, 239].

Jehovah's Witnesses in Lockport are engaged in preaching the gospel of God's kingdom as did Christ Jesus and His apostles [244-245]. During the summer of 1946 Hammond, Reid, and others of Jehovah's Witnesses secured from the Chief of Police of the City of Lockport a permit for use of sound equipment in connection with a series of public meetings to be held in Outwater Park on four consecutive Sundays [67, 68, 94, 217]. Each time the sound equipment was operated for the purpose of amplifying the voice of the speaker [68, 94, 226]. The appellant, Saia, owned an automobile that had sound-amplifying equipment

attached thereto, consisting of microphone and amplifying apparatus together with incidental equipment [53, 55, 70, 232]. He used that equipment and operated it during this series of meetings in co-operation with the speakers on each occasion [68, 81]. The permit for use of the sound equipment in connection with the public meetings expired at the termination of the series of four meetings first held in the park by Jehovah's Witnesses [81, 227].

On or about July 24, 1946, Nelson Howell and Roy Mort, Jehovah's Witnesses, planning for a second series of four meetings in the park, went to the Chief of Police in Lockport and attempted to secure a permit for Saia to use his sound equipment in connection with the proposed second series of four public meetings [220, 226]. They requested a permit for use of the sound equipment to amplify the voice of the speaker on Sundays, September 1, 8, 15 and 22, 1946 [79, 220]. The Chief of Police denied the requested permission for Saia to use the sound equipment in the park for this series of meetings, stating that objections had been made to the holding of the meetings in the park by Jehovah's Witnesses [79, 227]. The Chief of Police refused to renew the previous permit that had been granted for use of the sound equipment incidental to the first series of public meetings held in the park [227]. The Chief of Police referred Hammond and Mort to the Mayor [226]. The Mayor likewise refused to grant the permit, as did the Park Superintendent [226].

On Sunday, September 1, 1946, Hammond, Mort, Reid, Saia, and others of Jehovah's Witnesses proceeded to hold the first meeting of their second series of meetings in Outwater Park [42, 86, 90, 96]. This group of Jehovah's Witnesses, together with several other persons, assembled in Outwater Park to hear the speaker, one of Jehovah's Witnesses [90]. The appellant Saia brought along his automobile with sound equipment for the use of the speaker on

such occasion [70]. Saia set up the sound equipment at the place of assembly, in the automobile which was about 25 feet away from the speaker [53, 82, 83, 87]. The microphone was placed before the speaker [78]. The amplifying horns, on top of the automobile, were used for the purpose of amplifying the voice of the speaker [54, 70]. The speech began [51, 78]. The topic of the speech was a Bible subject; in fact, it was a discourse or sermon upon spiritual matters [48, 51, 54].

After the speech started, while the speaker's voice was going through the amplifier to the audience assembled in the park to hear the talk, a special officer assigned to duty in the park approached Saia and ordered him to discontinue use of the sound equipment [43, 44, 83, 84]. Saia informed him that he did not have a permit since the Chief of Police had refused to grant one [42-43, 87]. This was almost immediately after the talk began [92]. Upon Saia's refusal to discontinue, the special officer left with a warning that he was going to call the police [44]. Within three to five minutes thereafter Harry J. Wolfe and Francis J. McLoughlin, police officers, appeared [45]. They demanded that the use of the sound device be discontinued [84, 88]. Saia and others of Jehovah's Witnesses remonstrated with the officers and attempted to show them booklets and decisions containing legal arguments in favor of the right of Jehovah's Witnesses to protection in the exercise of their rights of freedom of speech, press and worship [72-73, 101]. Office Wolfe stated that he "didn't have a damn bit of use for what had been written about the Constitution protecting the rights of Jehovah's Witnesses, nor the decisions of the Supreme Court of the United States" [78, 84-85, 100]. Wolfe immediately and forcibly cut off the sound equipment and roughly threw the amplifier and other equipment into the car. Officer McLoughlin placed Saia under arrest and

charged him with a violation of Section 2 of the ordinance [20, 55].

On Sunday, September 8, 1946, Hammond, Mort, Reid, and others of Jehovah's Witnesses and people invited to attend the meeting, again assembled in Outwater Park to hear the second talk to be delivered in the second series of four public meetings in the park [61]. Saia came along, bringing his car and sound equipment [60]. These he located in the park [60]. In front of the speaker, Saia set up the microphone, which was attached to the amplifying devices on top of his car parked about 25 or 30 feet away [60-61]. In the near-by ball park, about a thousand feet from the place where Saia had the sound equipment set up for the use of the small assembly in the park, the Lutherans were holding a big public gathering [63-64]. In the ball park the Lutherans were using sound equipment which could be heard by persons in the park [63]. The stadium in the ball park where the Lutherans were holding their meeting was surrounded by a high six-foot fence [63]. Like the talk that was attempted to be given over the Saia sound equipment on the previous Sunday, the talk on Sunday, September 8, related to an explanation of Bible prophecies, showing the establishment of God's kingdom [65, 67, 83].

Fifteen minutes after the Bible discourse began Paul A. Morehouse and Joseph G. Chausse, policemen of the City of Lockport, approached Saia and asked him whether he had a permit for the operation of the sound equipment [61, 63-64]. Having none, because of the refusal of the Chief of Police to grant the previous request made in his behalf, Saia informed the officers that he had none [61]. They ordered him to shut off the sound equipment [61, 64]. Saia attempted to talk to them and to show that the ordinance did not apply, because he was a minister and also the speaker was a minister [61]. Saia and others showed the officers the law and Supreme Court decisions

[61]. Chausse, refusing to recognize the right of Saia to operate the equipment in the absence of a permit, stopped the operation of the sound equipment [62]. The officers distinctly heard the speaking through the sound device while 25 feet away [61, 62]. When the equipment was cut off the sound device in operation in the stadium across the road from the park, where the Lutherans had gathered, could be heard [62, 64, 65]. The Chief of Police had granted a permit to the Lutherans for use of the sound equipment in the ball park [63]. The officers testified that the sound of voices from the Saia device could be heard only about 50 feet or 100 feet away as they approached the speaker serviced by the device [64]. Appellant, not having a permit and having operated the sound equipment without one, was thereupon arrested and charged with a violation of Section 2 of the ordinance in question [21, 62].

On Sunday, September 15, the same group of Jehovah's Witnesses and other persons assembled in Outwater Park for the third of their series of public meetings [189]. Saia again appeared with his sound equipment on his automobile. The microphone was set up in front of the speaker as on previous occasions [189]. The amplifying apparatus was operated as on former occasions [232]. The talk delivered to the audience on this occasion was entitled "World's Woes—Why Permitted?" [231]. Shortly after the speaker began delivery of his talk to the assembly in the park over the Saia sound device, John E. Hull, police officer of the City of Lockport, approached the park, stopped about 500 or 600 feet away from the amplifying device being operated by Saia [196]. Then Hull went on to the Saia car, on top of which were the amplifying devices that were then in operation and use by the speaker [197]. As Hull got closer, the speaking could be heard very distinctly [200]. He asked Saia whether he had a permit to operate the sound device. Saia informed Hull that he had

no permit; so the officer pulled the connecting cord between the amplyifier and the microphone and stopped operation of the device [199]. He then charged Saia with violation of Sections 2 and 3 of the ordinance and arrested him [31, 190, 200].

On Sunday, September 22, 1946, the fourth and last of the series of public meetings was held by Jehovah's Witnesses and a number of invited persons appeared at the park to hear the speaker deliver a talk on the subject "Christians in the Crucible" [172, 234]. Also on this occasion Saia was present to provide the speaker with the use of his sound equipment [230-231]. It was set up as on previous occasions for the use of the speaker [231]. It was in operation when, about 20 minutes after the talk began, George Gardner, Sr., a policeman of the City of Lockport, appeared [171, 207]. He had come to the park and stopped about 200 feet from where the Saia loudspeaker was located [171, 181]. He went over to where Saia was seated in his car equipped with the amplifiers [171]. He asked Saia whether he had a permit [173]. Saia produced his credentials of ordination issued by the Watch Tower Bible & Tract Society [173, 229]. Such, being not considered as a permit, was not recognized by Gardner and his companion officer, Sheehan [173, 180]. Gardner requested Saia to shut off the sound equipment [173, 181]. Saia refused. Gardner cut off the sound equipment and placed Saia under arrest because he did not have a permit required by the ordinance [174, 181]. Thereupon he charged Saia with violation of Sections 2 and 3 of the ordinance [33].

Testimony of the complaining witnesses varied as to the distance that the talk over the loud speaker could be heard on each occasion [61, 62, 64, 130, 137, 141, 145, 155, 163, 175, 187, 196, 197]. The testimony was that it could be heard from 25 to 500 feet away [62, 196]. However, a majority of the witnesses agreed that the speech over the sound

equipment could not be heard intelligibly beyond 250 feet [175, 177]. The sound technician, Joseph Stralker, said speech over the device could be heard intelligibly at 300 feet [248]. He stated that 500 feet audibility was not intelligible [248]. He stated that speech over the device 600 feet distant was hardly audible [252].

All of the complaining witnesses testified that the meetings were orderly and that the subject matter of the speech was not offensive to them [127, 133, 138-139, 165, 166, 177, 185, 191, 201]. They all admitted that the talks were upon "religious matters" [48, 54, 67, 134, 147, 160, 176, 185]. Practically every one of the complaining witnesses admitted having heard church bells ring on Sunday and that they were not offended at the ringing of church bells [127, 139, 148, 163, 177, 185, 193, 212]. In fact, all admitted that the operation of the sound device was not louder than church bells [127, 144, 148, 163, 177, 185, 193, 212]. Indeed, they admitted that the sound device was not nearly as loud as church bells while ringing on Sunday [177]. None of the witnesses testified that he was prevented from enjoying the facilities of the park by reason of the use of the sound equipment [132, 138, 139, 141, 147, 177]. In fact, many of the complaining witnesses testified that they were not even annoyed by the sound equipment [132, 133, 138, 142, 147, 177, 185, 202]. Some stated that they had no objection to the use of the sound equipment in the park [161, 186].

One of the complaining witnesses testified that the loudspeakers in the ball park, which are much louder than the sound device used by appellant did not annoy, even as did not the church bells and factory whistles that are much louder than the sound device used by the defendant [126-127].

The undisputed evidence showed that Samuel Saia, Walter Reid, Walter M. Hammond, Roy Mort, and Nelson Howell are duly ordained ministers of the gospel [72, 76, 87,

214, 219, 226, 229, 233, 239]. Each testified that he was authorized to represent the Watch Tower Bible & Tract Society, the legal governing body of Jehovah's Witnesses [72, 76-77, 84, 87, 215, 229, 233]. Each testified that he considered it to be his bounden duty to Almighty God as a minister of the gospel to preach publicly in the park and to make use of the sound equipment in order to sufficiently amplify the voice of the public speaker so that the message being delivered to the assembled audience could be heard and understood by all in attendance [70, 75, 77, 82, 223, 224, 225, 234, 241]. The appellant and others of Jehovah's Witnesses did not desire to flout the law, according to their testimony; but since the Mayor had denied the permit to use the sound equipment they regarded his action, as well as the ordinance prohibiting use of the sound equipment, as being contrary to the law of Almighty God [89, 91, 97, 221, 222]. They testified that they believed the law to be unconstitutional as construed and applied to them [75, 93, 221, 222]. Therefore they, like the apostles of Christ Jesus, chose to obey God rather than men and persisted in giving the lecture in the park and simultaneously therewith using the sound equipment [82, 89, 97, 244].

The undisputed evidence shows that the denial of the permit was not for the purpose of regulation of the use of sound devices in the park [62, 63, 68, 226, 227].

The evidence shows that the permit was denied for the purpose of censorship, because some persons had objected to Jehovah's Witnesses holding meetings in the park and for that reason the Chief of Police of the City of Lockport had denied the requested permission for use of the sound equipment in connection with the second series of four lectures to be given at the public meetings in the park during September 1946 [227].

How Issues Were Raised

By motions to dismiss, filed at the close of the evidence, the appellant contended that the ordinance in question, as construed and applied to authorize conviction of the appellant for the use of sound equipment in connection with the delivery of a Bible sermon by a minister in a public park, was unconstitutional and void in that it abridged appellant's right to the freedom of conscience, freedom to worship Almighty God, freedom of speech and freedom of assembly contrary to the First and Fourteenth Amendments to the United States Constitution.

Grounds and Decisions Sustaining Appellate Jurisdiction of the Supreme Court of the United States and Showing Federal Questions Involved on Appeal.

ONE

The provisions of the ordinance deprive appellant of his rights to freedom of speech, freedom to communicate information and opinion to others, freedom of assembly and freedom to worship Almighty God contrary to the State and Federal Constitutions and are, therefore, unconstitutional.

Hague v. *C. I. O.*, 307 U. S. 496;
Schneider v. *New Jersey*, 308 U. S. 147;
Thornhill v. Alabama, 310 U. S. 88;
Jamison v. *Texas*, 318 U. S. 413.

TWO

The provisions of the ordinance are presumed to be unconstitutional and the burden falls upon the People to prove to the satisfaction of the Court that they are constitutional.

Busey v. *District of Columbia*, 138 F. 2d 592, executing mandate at 319 U. S. 579;

West Virginia State Board of Education v. *Barnette*, 319 U. S. 624, 639;
Thomas v. *Collins*, 323 U. S. 516, 529-530.

Discussion

One

The provisions of the ordinance deprive appellant of his rights to freedom of speech, freedom to communicate information and opinion to others, freedom of assembly and freedom to worship Almighty God contrary to the State and Federal Constitutions and are, therefore, unconstitutional.

Public Parks devoted to recreation and the common use of the public, as is Outwater Park, have from time immemorial been used as places of assembly, upon the hustings and in the commons, as far back as the mind of free people can remember. As far back as the memory of free people can extend, the public parks have been used as places for making public speeches upon commercial, political and religious questions. Since the days of the Lord Jesus Christ and His apostles Christian ministers whose lives are devoted to the evangelizing of the people have made use of concourses, market places, hustings and public parks; in fact, any place where a crowd could be gathered and talked to, as a means of preaching the gospel. These forums cannot be denied to persons by censorship laws or prohibitory laws. *Jamison* v. *Texas*, 318 U. S. 413; *Schneider* v. *New Jersey*, 308 U. S. 147; *Hague* v. *C. I. O.*, 307 U. S. 496.

There is a very practical reason why persons use such public places for these purposes. Today millions of people do not remain at home during such hours as are ordinarily devoted to house-to-house calls. The only possible way to reach those millions of people, under favorable weather

conditions, is by going publicly upon the streets and into the parks and other public places.

The ordinance in question, in its broad sweep, prohibits speech entirely whether in a public or private place. It seeks to make no distinction as to times, places, purposes or the contents of the utterances which it forbids. It lays down a blanket ban on all outdoor speaking with a sound device, except in *some cases* when it *may be licensed* by the Chief of Police.

If one has the right to use of the parks and streets, to assemble in public meeting, to speak to those assembled and to communicate information and opinion, then certainly one has the right to speak in such a manner as to be heard whether it be on the city streets, at public parks or anywhere else. Just as the right of free press includes the right to distribute, so freedom of speech includes the right to be heard. Any statute or ordinance which seeks to prevent the use of a sound apparatus, in effect, prohibits one from being heard, and, for all practical purposes, enforces a ban on the rights of assemblage and freedom of speech and freedom to communicate information and opinion to others.

The court has knowledge of the changes to which municipalities have been subjected by reason of the industrialization of the nation and the progress of science and civilization. These changing times have brought with them many things which of necessity have disturbed the quiet of the thoroughfares and public places. Today, one exercising the right of assemblage and of free speech on a city thoroughfare or in a public place must overcome the handicaps of noises generated by mechanized traffic, industries and other persons and instrumentalities using those places. It has, therefore, become a common practice, in the exercise of freedom of speech, of communication and of assemblage, to use mechanical means to amplify the voice.

In cities during the recent war emergency, both the Army and Navy and the United States Civil Service employed loud speakers and sound amplifiers attached to motor vehicles on the city streets to effectively reach people and to make known to the public their need for recruits for the armed forces and for various important war jobs. The police departments of some of the cities have such a sound system permanently attached to their motor vehicles which are used on the city streets in the performance of various duties.

The use of speech in the exercise of these constitutional rights is not static, is not confined to peroration of ancient times. The inhabitant of this land, in his exercise of speech, is as much entitled to use modern-day inventions to augment his exercise of that right as he is in exercising his right of freedom of the press to use modern-day printing machinery. Amplifying devices are as much a part of effective exercise of modern-day speech over the radio and in public places as is paper or the printing press essential for effective exercise of freedom of press. Purely because sound-amplifying devices are relatively new and a departure from traditional practice is no reason for prohibiting their use for lawful purposes any more than would be justifiable the prohibition of use of the printing press because it was relatively modern.

In this day of the airplane, jet propulsion, atomic bomb, streamlined trains and automobiles, to say nothing of radio, radar and other electronic developments, a loudspeaking apparatus is fast becoming or already has become a common convenience, if not a necessity, for the effective public speaker. Sound-amplifying devices used by speakers bear a necessary relationship to freedom of speech and freedom of worship exercised by a preacher acting faithfully and seriously as an obedient servant of his Master (Isaiah 12:; Matthew 10:27) and cannot be prohibited or censored.

This case falls squarely within the rule announced by the Supreme Court in *Hague* v. *C.I.O.*, 307 U. S. 496. Insofar as the ordinance provides for prohibition by police censorship of the use of necessary and ancillary equipment in the exercise of freedom of speech, the case falls within the rule announced by that Court in *Jamison* v. *Texas*, 318 U. S. 413. The mere fact that the ordinance is directed to the use of such sound apparatus on the streets or public places of the city of Lockport does not save it from the constitutional prohibition. It rather serves to condemn it. In the case of *Hague* v. *C. I. O.*, the Supreme Court declared unconstitutional an ordinance of Jersey City which sought to license, through the Director of Safety, public meetings in streets, parks and public places. In denouncing the ordinance, the Court held:

"Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembling, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.

"The privileges of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interests of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation be abridged or denied.

"We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. It does not make comfort or convenience in the use of the streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent riots, disturbances or dis-

orderly assemblage.' It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right." 307 U. S. at pp. 515-516.

In recent years, it has come to be recognized by all that the use of amplifying devices in radio broadcasting and in public speaking in public places such as auditoriums, halls and parks is a necessary and usual ancillary for effective free speech, speech that is intelligible. Without the use of such devices the right of free speech is definitely and seriously curtailed and impaired, if not frustrated entirely. Accordingly, it can now be said that the use of sound devices is a necessary part of the effective exercise of freedom of speech. Therefore the right to interfere with the use of such amplifying devices is limited to the same rules of restraint and regulation as would apply to any restraint upon the exercise of freedom of speech itself. The mere fact that this is an amplifying device does not alone provide the city with new and extraordinary reasons for prohibiting and censoring the use of such device.

Assuming that the city has the right to reasonably regulate the use of the sound-amplifying device in circumstances like those here involved, as to time, place and manner, this ordinance is not such. It appears on its face to be prohibitory. It does not attempt, either explicitly or implicitly, to license or in any other way regulate or control the use of sound apparatus in the park in the exercise of free speech and the communication of information and views. The ordinance is so sweeping in its ban that it prevents in effect any public outdoor meeting for any purpose whatsoever. It absolutely and unequivocally prevents the communication of

views and the exercise of free speech, for it is practically impossible to exercise those rights on public streets or in parks today and be heard without the use of sound amplifiers.

The section of the ordinance is not limited to speech which is obscene, offensive to public morals or advocates unlawful conduct. Nor does it make comfort or convenience in the use of streets or parks the standard of official action. It is comprehensive in its ban of the use of sound apparatus and forbids it for any and every purpose, unless the Chief of Police can be inveigled into granting a permit. There is no restriction in its application with respect to time and place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants or the misuse or obstruction of the streets or parks. It prohibits entirely, in effect, the use of a device which is a great convenience to those who desire to hear and be heard and has a necessary relationship to the exercise of freedom of speech and assembly.

Although the rights previously enumerated are not absolute, and the State in the exercise of its police power may punish the abuse of these freedoms, it cannot under the guise of regulation abridge or infringe upon them.

These guaranteed rights are not exercised in a vacuum. They naturally and impliedly include the attraction of a crowd. The Supreme Court of the United States has recognized this with respect to the exercise of freedom of the press. In Ex parte *Jackson*, 96 U. S. 727, 733, the Court, in holding that regulations against the transportation in the mail of printed matter, which is open to examination, cannot be enforced so as to interfere in any manner with the freedom of the press, said: "Liberty of circulating is as essential to that freedom as liberty of publishing; in-

deed, without the circulation, the publication would be of little value."

The same principle applies here. A speech is delivered to an audience. The freedom to make a speech includes the freedom to be heard. The ordinance cannot be saved because it relates to the distribution of speech and not to the enunciation, for liberty of circulating is as essential to that freedom as liberty of speaking. Without the circulation, the enunciation would be of little value. Ex parte *Jackson*, 96 U. S. 727, 733; *Lovell* v. *Griffin*, 303 U. S. 444, 452.

In *Schneider* v. *New Jersey*, 308 U. S. 147, the Court declared unconstitutional an ordinance of the Town of Irvington which prohibited canvassing, soliciting and distribution of circulars, or other matter, or calling from house to house in that town, without first having reported to and received a permit from the chief of police or other police officer. It was argued that the ordinance and regulation involved were designed for the purpose of preserving the peace, prohibiting fraud and trespass, and to keep the streets clean and of good appearance. In making its decision, the Court held the ordinance not to be regulatory, but censorial and prohibitory and stated:

"This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restrictions of enjoyment of these liberties.

"In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere

legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights . . . .

"As said in *Lovell* v. *City of Griffin, supra* [303 U. S. 444] pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.

"Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of the citizens; some persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that con-

siderations of this sort do not empower a municipality to abridge freedom of speech and press. *Schneider* v. *New Jersey*, 308 U. S. at pp. 161, 164.

In a subsequent decision, *Cantwell* v. *Connecticut*, 310 U. S. 296, a statute which prohibited solicitation without a permit of money or subscriptions for religious causes, was held to violate the freedom of speech guaranty as applied to one of Jehovah's Witnesses who stopped two men on the street, set up a phonograph and played a record attacking a certain religious sect. It was contended that the law was enacted to regulate solicitations for the prevention of fraud and imposition. The Court said:

"*First.* We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment. . . . In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. . . . ¶ . . . Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions."

In *Thornhill* v. *Alabama*, 310 U. S. 88, the prohibitory statute there knocked down prevented picketing and going upon private premises. The petitioner picketed upon private premises. The picketing, upon the private premises of the Brown Wood Preserving Company, Inc., was contrary to its wishes, and in defiance of its commands to leave the property. In setting aside the conviction as being an abridgment of freedom of speech and press, the Court said:

"*First.* The freedom of speech and of the press, which are secured by the First Amendment against abridgment

by the United States, are among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a state. . . . Mere legislative preference for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative that, when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations. *Schneider* v. *State*, 308 U. S. 147, 161, 162." 310 U. S. at pp. 95-96.

The trial court conceded that the freedoms of expression and assembly of appellant may have been prohibited, but justifies such prohibition on the ground that it leaves untouched his right to express his views orally without the aid of an amplifier. It is well established by a long line of decisions that the restriction of any basic civil right cannot be justified by the fact that other rights remain unimpaired and that the denial of a right in one manner, respect or place may not be warranted by the freedom to exercise that right in other ways, respects or places. See *Schneider* v. *New Jersey*, 308 U. S. 147, 163, where the Court declared: "But as we have said, . . . one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."

The Police Court of Lockport relied upon the cases of *Cox* v. *New Hampshire*, 312 U. S. 569, and *Hamilton* v. *Montrose*, 109 Colo. 228, 124 P. (2d) 757. [35]

These cases are not analogous in fact or law to the case at bar.

In the *Hamilton* case the Supreme Court of Colorado rested its decision mainly on the facts produced by testimony of witnesses, which were found to show that the conduct of the defendant amounted to a breach of the peace and disturbed lawful occupants and property owners in the neighborhood. The court there specifically stated (109 Colo. at p. 237): "Applying, therefore, the same standards that were used in the *Cantwell* case [310 U. S. 296], we reach an opposite conclusion in the instant case from that announced in the *Cantwell* case because of the differing facts."

There was no evidence of that type produced in the case *sub judice,* no similar factual situation, and no finding of facts upon which either the trial court or the County Court could base the decision.

The decisions of the courts below and that of the Colorado Supreme Court in *Hamilton* v. *Montrose,* are ably analyzed in the clear and cogent dissent of Mr. Justice Otto Bock in the *Hamilton* case. The dissenting opinion differed with both the findings of fact and conclusions of law and declared (109 Colo. at p. 239):

"The constitutional questions raised are of more importance. Within the last decade the Supreme Court of the United States, under the able leadership of the then Chief Justice Charles Evans Hughes, showed in an affirmative way how the civil liberties of the individual may be vindicated and preserved. Practically all of the cases cited in the majority opinion indicate this definite trend. What freedom of speech, the press, and exercise of religion actually mean can be determined only when these principles are tested in specific instances. The tendency now is not to widen the conflict between liberty and authority, but to reconcile the relationship between these governmental principles. Would a statute or ordinance which absolutely

prohibits the use of any loud-speaking device under any circumstances be an abridgment of free speech? I say it certainly would. Just as the right of free press includes the right to 'distribute', so freedom of speech includes the right to be 'heard'. The use of a loud-speaker, under the circumstances, is not a nuisance *per se*. . . . A loud-speaking device is a great convenience to those who desire to hear and be heard, and bears a necessary relationship to freedom of speech. Its use may reasonably be regulated as to time, place and manner. *Cantwell* v. *Conn.*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352. . . . Concepts of civil liberty, such as freedom of speech and the press, are relative and not absolute, and vary with time and circumstances; and so, amplification devices, in recent years, have gone largely into use, and have their necessary rights. That a city may regulate the use of such sounding devices and protect itself 'from concentrated and continuous cacophony' already has been indicated above. The inertia which sometimes exists in municipalities in protecting individual liberty must be overcome by affirmative action in the enactment of laws that will not abridge, but reconcile, the exercise of free speech and religion, with the authority to reasonably regulate it in the interest of the public safety, health, welfare or convenience. . . .

"The majority of the court here relies on the case of *Cox* v. *New Hampshire*, 312 U. S. 569, 61 S. C. 762, 764, 85 L. Ed. 1949, 133 A. L. R. 1396, to justify its opinion. In that case the sole charge against appellants was that they were 'taking part in a parade or procession' on public streets without a permit as the statute required. In referring to that case in *Trojello* v. *Walenburg*, 108 Colo. 427, 118 P. (2d) 1081, we said that it contained an excellent statement of the power of a municipality to impose regula-

tions in the use of public streets." *Hamilton* v. *Montrose*, 109 Colo. 228, 239-240, 242.

As was shown by Mr. Justice Bock, *Cox* v. *New Hampshire*, 312 U. S. 569, is not in point and does not support the conclusion reached by either the Colorado court or the courts below here.

The ordinances involved in the *Hamilton* case and in this case have been erroneously compared with and simulated to the New Hampshire statute involved in the *Cox* case. It should be remembered that the New Hampshire Supreme Court found that the statute in the *Cox* case, as construed by the court, was a regulatory measure as to time and place. It was a revenue-raising measure to provide for policing of parades and placing a portion of the burden of expense of managing the city's traffic during a parade upon the holders of the parade. The statute in the *Cox* case did not attempt to prohibit or censor. The ordinance in this case both prohibits and censors.

In *Brachey* v. *Maupin*, 277 Ky. 467, 126 S. W. (2d) 881 and *Maupin* v. *Louisville*, 284 Ky. 195, 144 S. W. (2d) 237 the ordinances involved did not entirely prohibit the use of sound trucks, but rather attempted to regulate their use. In the former case, the attempted regulation was through designating certain areas comprising 5% of the city through which sound trucks could not be operated, letting free the remaining 95% and fixing certain hours for such operation. In the latter case, the regulation was through a license of sound trucks by the chief of police. We do not pass judgment on whether such regulations were reasonable and proper, but merely point to the fact that those ordinances were not entirely prohibitory as is the one here questioned.

As a matter of fact, the Court of Appeals of Kentucky, in *Brachey* v. *Maupin*, pointed out that the Kentucky courts

had previously stricken out two ordinances, one passed in 1931 and the other in 1935, which were entirely prohibitory and not regulatory and stated (277 Ky. at p. 472):

"We are unable to agree that the former ordinances and the one presently involved are of the same character and kind. It is our view that they are radically different. The former two ordinances sought to entirely prohibit the operation of a sound truck in the City of Louisville at any time or place, whereas the amendatory ordinance here involved is not so broad in its scope and seeks to regulate rather than prohibit."

The court here should not adopt a "forced audience" theory to support the decision below. Certainly, there cannot be said to be more of an element of compulsion in the use of a sound amplifier in the exercise of freedom of of expression and freedom of assembly than exists when literature is distributed in the exercise of freedom of the press and speech, whether by handing it to a person, leaving it on his doorstep, or sending it through the mails. Nor is there any greater compulsion than can be said to exist in canvassing, soliciting or making house-to-house calls for evangelical or political purposes. *Schneider* v. *New Jersey*, 308 U. S. 147; *Lovell* v. *Griffin*, 303 U. S. 444, *Cantwell* v. *Connecticut*, 310 U. S. 296; Ex parte *Jackson*, 96 U. S. 727. Those are just as much acts of compulsion in the same sense as the use of a sound amplifier.

However, the "forced audience" theory in such circumstances has been entirely vitiated by the decision of the Supreme Court of the United States in the case of *Martin* v. *City of Struthers*, 319 U. S. 141. There, appellant, one of Jehovah's Witnesses, called at the homes of strangers, knocking on doors and ringing doorbells in order to distribute to the inmates leaflets advertising a public Bible discourse. The city ordinance forbade the summoning of in-

mates in that manner for that purpose. The Court held the ordinance to be a violation of the constitutional rights to free speech and press. Mr. Justice Black, speaking for the Court, said:

"For centuries it has been a common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meetings. Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community. In the instant case, the City of Struthers, Ohio, has attempted to make this decision for all its inhabitants. The question to be decided is whether the City, consistently with the federal Constitution's guarantee of free speech and press, possesses this power. . . . [¶] . . . This freedom embraces the right to distribute literature, *Lovell* v. *Griffin*, 303 U. S. 444, 452, and necessarily protects the right to receive it. The privilege may not be withdrawn even if it creates the minor nuisance for a community of cleaning litter from its streets. *Schneider* v. *State*, 308 U. S. 147, 162. . . . [¶] . . . Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved." 319 U. S. at pp. 141-142, 143, 146-147.

The City of Lockport does not have the power to determine for all its inhabitants that they do not desire to — expressions of opinion enunciated over sound amplifiers. It must preserve for those who desire to exercise their freedoms of expression and assembly in that manner and for those who are willing listeners their rights so to do, just

as it must preserve the right of a distributor of literature and of those willing to receive it. The first duty of the city is to preserve those constitutional privileges. Whatever inconvenience it causes the city, the city must find ways to regulate without invading constitutional rights.

The courts have gone far to protect the right of free speech together with the other basic civil rights from invasion in any degree even to the extent of leaving them to the caprice of a licensing officer or an electorate. In the case of *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, the Court pointed out that one's right to life, liberty and property, to free speech, free press, freedom of worship and assembly and other fundamental rights may not even be submitted to a vote and they depend on the outcome of no election. The Court carefully considered the law of the State of West Virginia compelling the flag salute by school children and further pointed out that those freedoms are susceptible of restriction only to prevent grave and immediate danger in which the State may lawfully act and that it is the purpose of the Fourteenth Amendment to the Federal Constitution to reserve those rights from all official control.

The only permissible limitation upon the exercise of those freedoms may be said to be, at most, reasonable regulation as to time, place and manner. Ordinances prohibiting or censoring the exercise of these activities have been held uniformly to be unconstitutional. "Ordinances absolutely prohibiting the exercise of the right to disseminate information are, *a fortiori*, invalid." *Jones* v. *Opelika*, 316 U. S. 584, 595-596.

The ordinance in question cuts off entirely from the hearer the right to hear effectively a public speech in a public place. It deprives the speaker of the right to be heard intelligibly by his entire audience. It therefore

abridges the right of freedom of speech and of communication and of assembly. It certainly is not regulatory as to time, place or manner in which one may use a sound-amplifying device in the city. It does not purport to be a revenue-raising measure to bear any excessive police burdens resulting from the use of sound equipment.

It must be conceded that the public utterances of Jehovah's Witnesses amplified in the interests of willing listeners come clearly within the category of free speech and assembly guaranteed by the Federal and State Constitutions.

In *City of Blue Island* v. *Kozul*, 379 Ill. 511, 51 N. E. 2d 515, a conviction under a city by-law or regulation providing for the procuring of a license and the payment of a fee was set aside. The city argued that its ordinance was not prohibitory. "It is contended by the city that this is a regulatory ordinance. A municipality may enact regulations in the interests of public safety, health, welfare or convenience, within the limits permitted by law, but in every case this power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe that freedom protected by the United States Constitution and by the Constitution of the State of Illinois. *Cantwell* v. *Connecticut, supra; Schneider* v. *Town of Irvington, supra.* The ordinance is not regulatory. As applied to the facts in this case, the ordinance makes no provision regulating the manner of carrying on the business of peddlers in the city of Blue Island."

The only limitation that is permitted by law upon the exercise of freedom of speech, freedom of press and freedom of worship is that a community may require a stranger to establish his identity and authority to represent his organization. While prohibition and censorship are condemned, the Supreme Court of the United States has said that laws

regulating the exercise of freedom of speech, press and worship are permissible. However, the permissible limit of regulation rather than prohibition or censorship is stated by that Court as follows: "Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The State is likewise free to regulate the time and manner of solicitation generally, in the interests of public safety, peace, comfort or convenience." *Cantwell* v. *Connecticut,* 310 U. S. 296, 306.

The ordinance here absolutely prohibits and censors entirely the exercise of appellant's right of free speech. It can be seen from the decisions of the Supreme Court of the United States that the ordinance is absolutely prohibitory, in addition to its provisions for censorship.

In *Largent* v. *Texas,* 318 U. S. 418, the regulation under which one of Jehovah's Witnesses was convicted required that she obtain a permit from the mayor before calling from door to door in the City of Paris, Texas. In unanimously declaring that the regulation was invalid and prohibitory rather than regulatory, the Supreme Court of the United States said: "Upon the merits, this appeal is governed by recent decisions of this Court involving ordinances which leave the granting or withholding of permits for the distribution of religious publications in the discretion of municipal officers. It is unnecessary to determine whether the distributions of the publications in question are sales or contributions. The mayor issues a permit only if after thorough investigation he 'deems it proper or advisable.' Dissemination of ideas depends upon the approval of the distributor by the official. This is administrative censorship in an extreme form. It abridges the freedom of

religion, of the press and of speech guaranteed by the Fourteenth Amendment." 318 U. S. at p. 422.

In *Jamison* v. *Texas*, 318 U. S. 413, it was argued that because under the law of Texas the City of Dallas owned absolute title to the streets and had the dominion of the landlord under the law over the control thereof, the ordinance prohibiting the distribution of literature upon the streets was valid. That argument was rejected and the conviction of one of Jehovah's Witnesses under the ordinance was set aside. The Court said: "They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes." 318 U. S. at p. 417.

The record is barren of any evidence whatsoever which establishes or from which it might be inferred that attention of passing motorists and pedestrians was so diverted as to create new traffic hazards or that appellant's acts on the occasion of his arrests had that effect. There are many things on the public highways and streets which may similarly divert the attention of motorists and pedestrians, for example, billboards, Burma-Shave signs, window displays, road repairs, airplanes, jet planes, etc. Even a pretty girl has been known to divert the attention of passing motorists. Yet no governing body or court would seriously contend that pretty girls should be barred from the parks, streets and highways. Nor that such other lawful activities could or should be banned for that reason.

There is no such showing here of any sufficiently imminent menace to the State itself or to the public welfare from the use of sound apparatus as to warrant either the legislative body or this court in determining that the use of such ap-

paratus is not appropriate any place in the city of Lockport and for any purpose. Appellant's conduct was not said to involve a breach of the peace, commission of a nuisance, disturbance or impeding traffic. The utterances made over the loud speaker are not asserted to have been abusive, subversive or in any other respect unlawful.

An ordinance regulating commercial pursuits and activities is one thing, but the application of regulations to conduct such as of appellant here, thereby interfering with his exercise of a constitutional right, is another. There is a difference in degree, which emphasizes the importance of protecting the individual from invasion of his constitutional liberties as distinguished from regulation of purely commercial enterprises. See *Schneider* v. *New Jersey*, 308 U. S. 147, where the Court (at page 163) made the differentiation as follows: "The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers. It is not a general ordinance to prohibit trespassing. It bans unlicensed communication of any views of the advocacy of any cause from door to door . . ."

Furthermore, the ordinance here is not regulatory, but prohibitory.

It has not been shown that outright prohibition or censorship of the use of sound amplifiers is warranted; that there exists any clear and present danger to a substantial interest of the State. Prohibition or censorship may be more convenient to the lawmaker and easier to fashion than a regulatory measure which adequately protects the general welfare of the community without suppressing legitimate liberties. But that does not justify a repressive enactment like the present one. Basic freedoms have a higher dignity under the Constitutions than municipal or personal convenience.

Two

The provisions of the ordinance are presumed to be unconstitutional and the burden falls upon the People to prove to the satisfaction of the court that they are constitutional.

Both appellee and the courts below lean upon the doctrine of the protection of public rights and the presumption of constitutionality as a refuge from the constitutional assault here made by appellant. The Police Court of Lockport concedes that the ordinance may deprive appellant of his freedoms of expression and assembly, but seeks to justify it on the basis of the rights of the public to at least a modicum of peace and quiet to which it is entitled.

It is submitted that when a regulation enacted under the police power of a municipality, whether on its face, as applied, or constructively, abridges, prohibits, or infringes upon any of the freedoms guaranteed by the First Amendment to the Federal Constitution, such ordinance or regulation is presumptively invalid; and the burden falls upon the authority asserting the power under the regulation to prove by a preponderance of the evidence that the regulation is a valid exercise of the police power directed at some abuse of the constitutional rights which, unless prohibited or regulated, would constitute a clear and present danger to the health, safety or general security of the community as a whole. The showing of the abuse is a condition precedent to the exercise of the police power where such exercise or power has a tendency to censor, limit, infringe, restrict or prohibit any of the constitutional freedoms. The police power does not even exist in such cases unless there is a clear showing of the abuse. This rule is well stated by Chief Justice Hughes in *De Jonge* v. *Oregon*, 299 U. S. 353:

"The people through their Legislatures may protect themselves against that abuse. But the legislative inter-

vention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. . . . Therein lies the security of the Republic, the very foundation of constitutional government."

The same rule was effectively supplied by the United States Court of Appeals for the District of Columbia in *Busey* v. *District of Columbia*, 138 F. 2d 592. Mr. Justice Edgerton, speaking for the court, said:

"Freedoms of speech, press, and religion are entitled to a preferred constitutional position because they are 'of the very essence of a scheme of ordered liberty.' (*Palko* v. *Connecticut*, 302 U. S. 319, 325). They are essential not only to the persons or groups directly concerned but to the entire community. Our whole political and social system depends upon them. Any interference with them is not only an abuse but an obstacle to the correction of other abuses. (Civil liberties are at present relatively little threatened by governmental action, but in many communities the civil liberties of unpopular groups are greatly threatened by private terrorism. Legal recognition of these liberties tends to discourage this terrorism.) . . . [¶] We think we may hold that when legislation appears on its face to affect the use of speech, press, or religion, and when its validity depends upon the existence of facts which are not proved, their existence should not be presumed; at least when their existence is hardly more probable than improbable, and particularly when proof concerning them is more readily available to the government than to the citizen. The burden of proof in such a case should be upon those who deny that these freedoms are invaded. . . . [¶] . . . No presumption which lacks a probable basis in fact should be permitted to conceal an interference with essential freedoms."

The City of Lockport thus far has failed to show a *real* (as distinguished from imagined) clear and present danger

and has thus not discharged the heavy burden placed upon it where these precious civil rights are infringed.

No evidence was produced here and no showing made of the need for such an ordinance. Until the City has discharged this burden, by proving a clear and present danger of substantial evils to the community, its attempts to apply and enforce the ordinance cannot be sustained.

The Court in the "labor organizer case" from Texas held that the clear and present danger test must be applied to abridgment of the liberties protected by the First Amendment. *Thomas* v. *Collins*, 323 U. S. 516. In that case the Court said: "Choice on that border, now as always delicate, is perhaps more so, where the usual presumption supporting legislation is balanced by the preferred place given in our scheme of the great, indispensable democratic freedoms secured by the First Amendment." *Thomas* v. *Collins*, 323 U. S. at pp. 529-530. See also *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 639; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-153.

Judged by proper standards, it is clear that appellant's conduct, under the circumstances, did not and could not constitute any clear and present danger which would justify an application of the police power that curtails the personal liberties secured by the Federal and State Constitutions.

It is respectfully submitted that the provisions of the ordinance are presumed to be unconstitutional; that the burden falls upon the People to prove to the satisfaction of the Court that it is constitutional; that a clear and present danger to a substantial interest of the community has not been shown; and that the People have failed to sustain this burden and have not established that the ordinance is constitutional.

Conclusion

Wherefore the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of the Court, because the court below disposed of important and substantial federal questions in a way that is in conflict with the Constitution of the United States and applicable decisions of the nation's highest court, and has so radically and far departed from the Constitution of the United States and the accepted sound course of judicial procedure as to call for exercise by the Supreme Court of the United States of its power of supervision and review to halt the same.

Respectfully submitted,

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Office & P. O. Address:
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APPENDIX "A"

Decision

[New York Law Journal, November 14, 1947, 1297]
COURT OF APPEALS

* * * * * * *

People, &c., res. v. Samuel Saia, ap—Judgment affirmed. No opinion. All concur.

APPENDIX "B"

Decision

STATE OF NEW YORK

Police Court, City of Lockport

FALSIONI, P. J.:

The cause here presented for my consideration involves the alleged violation on two separate occasions, September 15, 1946, and September 22, 1946, of the City of Lockport Penal Ordinance No. 38, Sections 2 and 3 in Outwater Park, a public park in the City of Lockport.

This Ordinance is entitled "Prohibiting Unnecessary and Unusual Noises." Section 2 of the Ordinance reads:

> Sec. 2. Radio devices, etc. It shall be unlawful for any person to maintain and operate in any building, or on any premises or on any automobile, motor truck or other motor vehicle, any radio device, mechanical device, or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of

travelers upon any street or public places or of persons in neighboring premises.

Section 3 reads:

> Sec. 3. Exception. Public dissemination, through radio loud-speakers, of items of news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission obtained from the Chief of Police.

By stipulation of the Attorney for the Defendant and the Attorney for the People both cases were tried together.

The only question presented here, to be decided by this Court, is whether or not the City Penal Ordinance was violated by the defendant and whether or not the Ordinance is constitutional. The defendant has admitted, under oath, that he operated the loudspeaker in a public place on two separate occasions, without first obtaining a permit from the Chief of Police. The City of Lockport does not deny the right of the Jehovah's Witnesses to distribute literature on the streets or to assemble in a public place to have a public meeting; nor does the Penal Ordinance in question prohibit the same.

The City of Lockport and this Court takes the position that the United States Supreme Court cases which the defendant has cited, and *State* v. *Barber*, 289 N. Y. 378, are not on point in this case. In our case there is no prohibition of the activities of the Jehovah's Witnesses in distributing printed matter or preaching the gospel of Jehovah, but there is a prohibition as to the use of a radio loudspeaker in so doing without first obtaining a permit from the Chief of Police. This permit is necessary, and it is required for all faiths and denominations and for all activities carried on in a public place or public street in said City where a radio loudspeaker is to be used.

After hearing all the testimony in this case I find that the cases of *Cox* vs. *State of New Hampshire*, 312 U. S. 556, and *Hamilton* vs. *City of Montrose*, 109 Col. 228, 124 Pac. 757, are on point with this case.

Justice Jackson, writing the majority opinion for the Supreme Court of Colorado in the above case held: "That the ordinance itself did not set up religious censorship . . . it is aimed solely at the prevention of noises that become nuisances. In the administrations of the ordinance in the present case we see no attempt, overt or hidden, to override constitutional guaranties. We believe the people of Montrose have the right to protect themselves from concentrated and continuous cacophony."

In reaching his decision Justice Jackson took into careful consideration the following United States Supreme Court cases: In *Lovell* v. *Griffin* (303 U. S. 44), In *Hague* v. *Committee for Industrial Organization* (307 U. S. 496), In *Schneider* v. *State* (308 U. S. 147), In *Cantwell* v. *Connecticut* (310 U. S. 305).

Justice Jackson then cited the case of *Cox* v. *State of New Hampshire* (312 U. S. 569), wherein Chief Justice Hughes held that the facts in the above United States Supreme Court cases were inapplicable to *Cox* v. *State of New Hampshire,* in that "defendants relied upon the Fourteenth Amendment to the Constitution of the United States and argued that they had been deprived of their right of freedom of worship, as well as freedom of speech and freedom of assembly. Chief Justice Hughes upheld the validity of a municipal ordinance granting the authority to control the use by the municipality of its public streets for parades or processions, and upheld the judgment of the Supreme Court of New Hampshire, which had affirmed the convictions in the lower court of the defendant for taking part in a parade or procession upon a public street without license having first been obtained."

In the *Hamilton* v. *City of Montrose* case, *supra,* Justice Jackson stated: "We believe that the facts in *Cox* v. *State of New Hampshire, supra,* more nearly resemble those in the instant case than any of the others above mentioned, and that we would be justified in following the decision in that case. And certainly the principle of ordered liberty with its necessary concomitant measure of control contains an excellent expression in the following words of Mr. Justice Hughes in that case: "Civil liberties, as guaranteed by

the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions."

Justice Roberts in his dictum opinion in *Schneider* v. *State*, 308 U. S. 147, states: "Municipal authorities . . . have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated . . . nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion."

Justice Pound in 229 N. Y. 248, 253 states: "A park is a pleasure ground set apart for recreation of the public, to promote its health and enjoyment. (*Perris* v. *N. Y. Cent. R. R. Co.*, 36 N. Y. 120, 124) It need not and should not be a mere field or open space, but no objects, however worthy, such as court houses and school houses, which have no connection with park purposes, should be permitted to encroach upon it without legislative authority plainly conferred, even when the dedication to park purposes is made by the public itself and the strict construction of a private grant is not

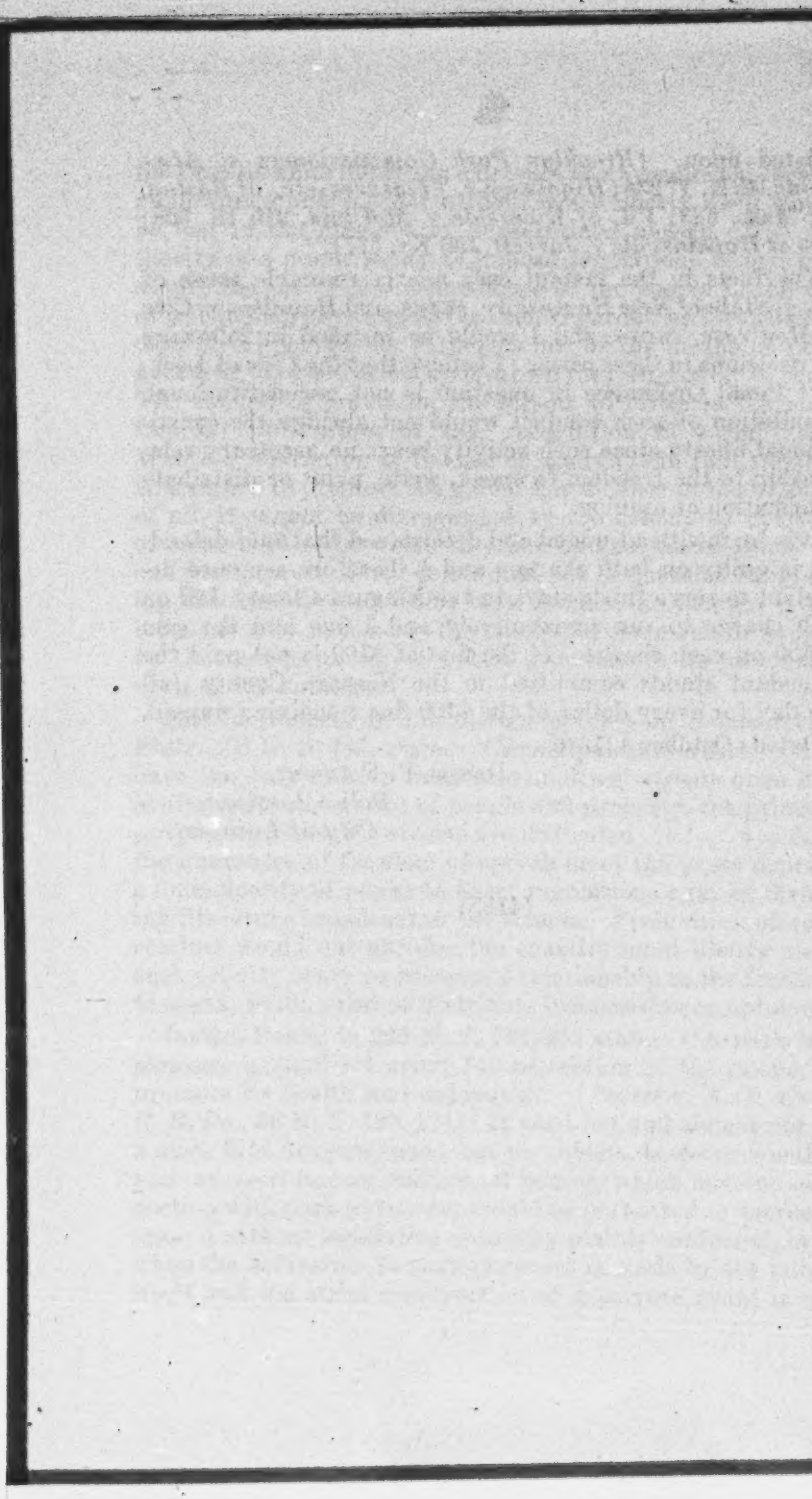
insisted upon. (*Brooklyn Park Commissioners* v. *Armstrong*, 45 N. Y. 234; *Higginson* v. *Treasurer, etc., of Boston*, 212 Mass. 583; *Vil. of Riverside* v. *MacClain*, 210 Ill. 308; *City of Hopkinsville* v. *Jarrett*, 156 Ky. 777)."

The facts in the instant case nearly resemble those of *Cox* v. *State of New Hampshire, supra*, and *Hamilton* v. *City of Montrose, supra*, and I would be justified in following the decisions in these cases. I believe that the City of Lockport Penal Ordinance in question is not unconstitutional. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion.

It is forthwith adjudged and determined that said defendant is guilty on both charges and I therefore sentence defendant to serve thirty days in the Niagara County Jail on each charge to run consecutively and I fine him the sum of $50 on each charge. If the fine of $100 is not paid the defendant stands committed to the Niagara County Jail one day for every dollar of the $100 fine remaining unpaid.

Dated: October 4, 1946.

DANIEL P. FALSIONI,
Police Justice,
City of Lockport.



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Supreme Court of the United States

OCTOBER TERM 1947

No. 504

SAMUEL SAIA, *Appellant*

v.

THE PEOPLE OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF
THE STATE OF NEW YORK

BRIEF
FOR APPELLANT

HAYDEN C. COVINGTON
Counsel

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A

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K

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L

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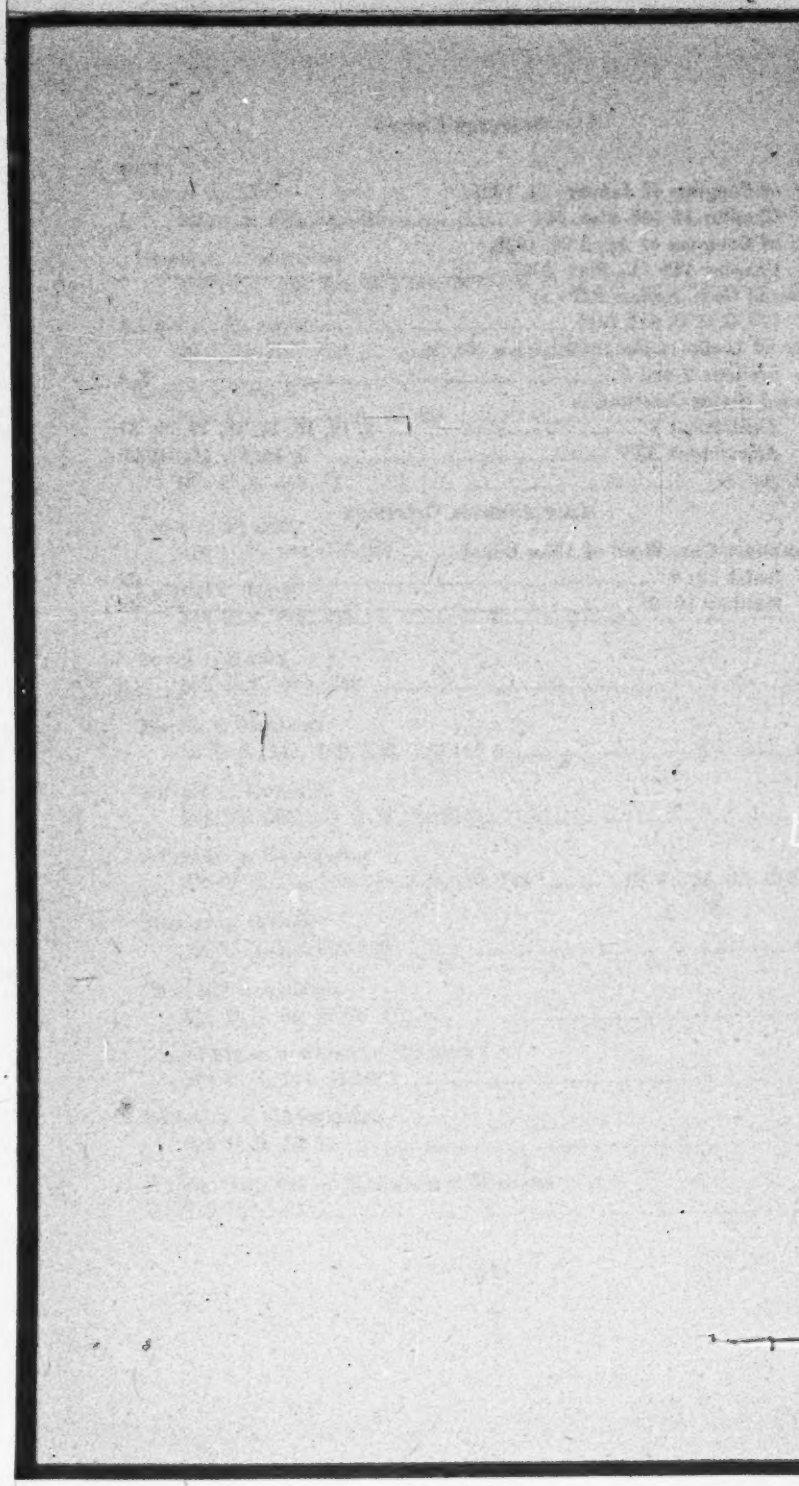

Supreme Court of the United States

OCTOBER TERM 1947

No. 504

SAMUEL SAIA, *Appellant*

v.

THE PEOPLE OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR APPELLANT

Jurisdiction

The jurisdiction of this court is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. These four cases present a state of facts within the jurisdiction of this Court.

Opinions of Courts Below

The New York Court of Appeals did not write an opinion. The decision of the Court of Appeals is not yet reported. It is set out in the record. [265-266][1] The County Court of Niagara County wrote no opinion. The decision of the County Court appears in the printed record. [257] The Police Court of Lockport wrote two separate opinions. The first opinion appears in the record. [22-23] The second opinion also appears in the record, in which the law relied upon is analyzed. [33-39]

Statement of Case

Questions Presented

1. Does the ordinance, which forbids the use of sound devices upon the streets or in the public parks of the City of Lockport, as construed and applied in this case, prohibit and abridge appellant's exercise of freedoms of speech, assembly and worship of ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution?

2. Does the ordinance, which confers arbitrary and discriminatory power upon the chief of police of the City of Lockport to permit the use of sound amplifying devices under some circumstances, censor liberty and abridge appellant's freedoms of speech, assembly and worship of ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution?

3. Is the ordinance, on its face and as construed and applied, unconstitutional because it abridges appellant's freedoms of speech, assembly and worship of ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution?

[1] All figures appearing in brackets herein denote pages of the printed record.

4. Is it within the police power of the City of Lockport to prohibit completely the use by speakers in its public parks of sound amplifying devices that are not inherently dangerous to the safety, health, morals, peace, general welfare or property of the city's inhabitants?

Legislation Drawn in Question

These cases draw into question the validity of state legislation, to wit, Penal Ordinance No. 38 of the City of Lockport, reading as follows:

> Section 2. Radio devices, etc. It shall be unlawful for any person to maintain and operate in any building, or any premises or on any automobile, motor truck or other motor vehicle, any radio device, mechanical device, or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of the travelers upon any street or public places or of persons in neighboring premises.
>
> Section 3. Exception. Public dissemination, through radio, loud speaker of items or news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission from the Chief of Police. [16, 22, 28, 34, 103, 109]

Timeliness

The judgment of the New York Court of Appeals was made and entered on November 14, 1947. [265-266] The petition for appeal to this Court was duly and timely presented. [266-269] On December 8, 1947, an order was made and entered allowing appeal to this Court. [269-270] On February 2, 1948, this Court noted probable jurisdiction. [272]

Form and History of Action

These criminal proceedings were instituted by informations in the Police Court of the City of Lockport, New York. Each of the four informations charged that Samuel Saia violated the above-named ordinance on September 8, September 15 and September 22, 1946. [19-21, 31-33] Each information is identical with respect to the alleged violation. In each information it is charged that Samuel Saia "did unlawfully, wrongfully, wilfully, feloniously and against the statute in such case made and provided violate Lockport City Penal Ordinance No. 38: . . . in that said defendant did maintain and operate on an automobile a radio device and loud speaker whereby the sound therefrom was cast directly upon the streets and public places in said City of Lockport, N. Y., to wit: Outwater Park. Such radio device was maintained for the purpose of attracting the attention of the passing public and the people in said park and the sounds coming therefrom could be heard to the annoyance or inconvenience of travelers upon the street and the users of said public park and neighboring premises. ¶ And that said defendant did violate said ordinance in that he failed to obtain a permit or permission from the Chief of Police." [2]

The first two informations were called for trial and heard together on Tuesday, September 10, 1946, in the Po-

[2] The two later informations differ slightly from the two original informations, in that "subdivision 3" of the ordinance is specified, as well as "subdivision 2".

lice Court of the City of Lockport. [41] Upon the call of the cases the appellant pleaded not guilty. [41] He announced ready for trial. Not being represented by an attorney, appellant was permitted by the court to have a friend assist him by questioning him during the trial of the two informations. [41-42] At the close of the People's case a motion to dismiss both informations and render a judgment of acquittal was filed and presented. [69] On denial of the motion exception was taken and allowed. [70] At the close of all the evidence another motion for dismissal and judgment of acquittal was made and filed. [102] The court reserved decision until the following day. On September 11, 1946, the court overruled the motion and found appellant guilty as charged in each information. [103-105] Saia was fined $15 on each charge and on default in payment of such fine he was sentenced to the Niagara County Jail for thirty days. [105] He duly appealed, in the manner required by law, on September 13, 1946. [105]

The second two informations were called for trial on September 28, 1946. [107] On that day they were heard together in the Police Court of the City of Lockport. [108] Upon the call of the cases the appellant pleaded not guilty and announced ready for trial. [107] Upon the call of these two informations for trial appellant was represented by counsel. [107] At the close of the People's case a motion to dismiss both informations and render a judgment of acquittal was filed and presented. [203-204] At the close of all the evidence another motion for dismissal and judgment of acquittal was made and filed. [253-256] That motion was denied and the court reserved decision in the cases until Friday, October 4, 1946. [256] On that day the court found the appellant guilty as charged in each information and sentenced him to serve thirty days under each information in the Niagara County Jail, and in addition thereto fined him $50 on each charge, ordering him committed to jail upon

default in payment of said fine, to be served at the rate of one day for every dollar of the fines unpaid. [38-40]

The convictions in these four cases were duly appealed to the County Court. [14, 26] Upon the appeal to the County Court the judgment of the Police Court in each case was affirmed. [258-259] Thereafter application was duly made for leave to appeal to the Court of Appeals of the State of New York. [7-11] Leave to appeal was granted. [4-5] Notice of appeal was duly served and filed. [5-6] After argument, submission and deliberation the Court of Appeals affirmed on November 13, 1947. [265-266]

On December 8, 1947, appellant duly presented his petition for appeal, statement, assignments of error and prayer for reversal to the court below. [266-269] The chief judge of the Court of Appeals of New York allowed appeal to this Court on December 8, 1947. [269-270] On February 2, 1948, this Court noted probable jurisdiction. [272]

Facts

Outwater Park is a public park situated in the City of Lockport, New York. [110] The park was granted to the city for use by the public by deed duly recorded. [111-112] The park is large, comprising about 28 acres. [121] It was a 1600-foot frontage on one of the public streets of Lockport, and a depth ranging from 250 to 400 feet. [111] The park is beautifully landscaped and studded with trees. [44, 47-48, 64, 65, 121] Various facilities are situated in the park, which is primarily devoted to recreation and other public purposes. [64-65, 110, 116, 122] It has a wading pool and playground for children. [117, 364] Part of the park is equipped for picnic parties, having tables and benches and stationary fireplaces. [110, 116] In addition thereto there is a baseball diamond and places dedicated for horseshoe pitching. [122] Also there are lawn bowling courts. [122] Throughout the park are suitable benches for rest, recrea-

tion and assembly of people who might use the park for public purposes. [110, 121] Adjacent to the park is a baseball field and stadium surrounded by a fence six feet high. [64, 65, 126] The park and ball field and stadium are separated by a two-lane park-divided highway. [64, 110]

Samuel Saia, the appellant, is a resident of Buffalo, New York. [70, 232] During each week he is employed by the City of Buffalo. [232] Being one of Jehovah's witnesses, in addition to his secular work, he preaches the gospel as an ordained minister of the Watch Tower Bible & Tract Society. [72, 228-229] Walter M. Hammond is also one of Jehovah's witnesses, being in charge of the congregation located at Lockport. [80, 214-215] Associated with Hammond and others of Jehovah's witnesses in Lockport is Walter A. Reid, another of Jehovah's witnesses, an ordained minister. [223, 239]

Jehovah's witnesses in Lockport are engaged in preaching the gospel of God's kingdom as did Christ Jesus and His apostles. [244-245] During the summer of 1946 Hammond, Reid, and others of Jehovah's witnesses secured from the chief of police of the City of Lockport a permit for use of sound equipment in connection with a series of public meetings to be held in Outwater Park on four consecutive Sundays. [67, 68, 94, 217] Each time the sound equipment was operated for the purpose of amplifying the voice of the speaker. [68, 94, 226] The appellant, Saia, owned an automobile that had sound-amplifying equipment attached thereto, consisting of microphone and amplifying apparatus together with incidental equipment. [53, 55, 70, 232] He used that equipment and operated it during this series of meetings in cooperation with the speakers on each occasion. [68, 81] The permit for use of the sound equipment in connection with the public meetings expired at the termination of the series of four meetings first held in the park by Jehovah's witnesses. [81, 227]

On or about July 24, 1946, Nelson Howell and Roy Mort, Jehovah's witnesses, planning for a second series of four meetings in the park, went to the chief of police in Lockport and attempted to secure a permit for Saia to use his sound equipment in connection with the proposed second series of four public meetings. [220, 226] They requested a permit for use of the sound equipment to amplify the voice of the speaker on Sundays, September 1, 8, 15 and 22, 1946. [79, 220] The chief of police denied the requested permission for Saia to use the sound equipment in the park for this series of meetings, stating that objections had been made to the holding of the meetings in the park by Jehovah's witnesses. [79, 227] The chief of police refused to renew the previous permit that had been granted for use of the sound equipment incidental to the first series of public meetings held in the park. [227] The chief of police referred Hammond and Mort to the Mayor. [226] The mayor likewise refused to grant the permit, as did the park superintendent. [226]

On Sunday, September 1, 1946, Hammond, Mort, Reid, Saia, and others of Jehovah's witnesses proceeded to hold the first meeting of their second series of meetings in Outwater Park. [42, 86, 90, 96] This group of Jehovah's witnesses, together with several other persons, assembled in Outwater Park to hear the speaker, one of Jehovah's witnesses. [90] The appellant Saia brought along his automobile with sound equipment for the use of the speaker on such occasion. [70] Saia set up the sound equipment at the place of assembly, in the automobile, which was about 25 feet away from the speaker. [53, 82, 83, 87] The microphone was placed before the speaker. [78] The amplifying horns, on top of the automobile, were used for the purpose of amplifying the voice of the speaker. [54, 70] The speech began. [51, 78] The topic of the speech was a Bible subject; in fact, it was a discourse or sermon upon spiritual matters. [48, 51, 54]

After the speech started, while the speaker's voice was going through the amplifier to the audience assembled in the park to hear the talk, a special officer assigned to duty in the park approached Saia and ordered him to discontinue use of the sound equipment. [43, 44, 83, 84] Saia informed him that he did not have a permit since the chief of police had refused to grant one. [42-43, 87] This was almost immediately after the talk began. [92] Upon Saia's refusal to discontinue, the special officer left with a warning that he was going to call the police. [44] Within three to five minutes thereafter Harry J. Wolfe and Francis J. McLoughlin, police officers, appeared. [45] They demanded that the use of the sound device be discontinued. [84, 88] Saia and others of Jehovah's witnesses remonstrated with the officers and attempted to show them booklets and decisions containing legal arguments in favor of the right of Jehovah's witnesses to protection in the exercise of their rights of freedom of speech, press and worship. [72-73, 101] Officer Wolfe stated that he 'didn't have a damn bit of use for what had been written about the Constitution protecting the rights of Jehovah's witnesses, nor the decisions of the Supreme Court of the United States.' [78, 84-85, 100] Wolfe immediately and forcibly cut off the sound equipment and roughly threw the amplifier and other equipment into the car. Officer McLoughlin placed Saia under arrest and charged him with a violation of Section 2 of the ordinance. [20, 55]

On Sunday, September 8, 1946, Hammond, Mort, Reid, and others of Jehovah's witnesses and people invited to attend the meeting, again assembled in Outwater Park to hear the second talk to be delivered in the second series of four public meetings in the park. [61] Saia came along, bringing his car and sound equipment. [60] These he located in the park. [60] In front of the speaker, Saia set up the microphone, which was attached to the amplifying devices on top of his car parked about 25 or 30 feet away. [60-61] In the near-by ball park, about a thousand feet from

the place where Saia had the sound equipment set up for the use of the small assembly in the park, the Lutherans were holding a big public gathering. [63-64] In the ball park the Lutherans were using sound equipment which could be heard by persons in the park. [63] The stadium in the ball park where the Lutherans were holding their meeting was surrounded by a high six-foot fence. [63] Like the talk that was attempted to be given over the Saia sound equipment on the previous Sunday, the talk on Sunday, September 8, related to an explanation of Bible prophecies, showing the establishment of God's kingdom. [65, 67, 83]

Fifteen minutes after the Bible discourse began Paul A. Morehouse and Joseph G. Chausse, policemen of the City of Lockport, approached Saia and asked him whether he had a permit for the operation of the sound equipment. [61, 63-64] Having none, because of the refusal of the chief of police to grant the previous request made in his behalf, Saia informed the officers that he had none. [61] They ordered him to shut off the sound equipment: [61, 64] Saia attempted to talk to them and to show that the ordinance did not apply, because he was a minister and the speaker also was a minister. [61] Saia and others showed the officers the law and Supreme Court decisions. [61] Chausse, refusing to recognize the right of Saia to operate the equipment in the absence of a permit, stopped the operation of the sound equipment. [62] The officers distinctly heard the speaking through the sound device while 25 feet away. [61, 62] When the equipment was cut off the sound device in operation in the stadium across the road from the park, where the Lutherans had gathered, could be heard. [62, 64, 65] The chief of police had granted a permit to the Lutherans for use of the sound equipment in the ball park. [63] The officers testified that the sound of voices from the Saia device could be heard only about 50 feet or 100 feet away as they approached the speaker serviced by the device. [64] Appellant, not having a permit and having oper-

ated the sound equipment without one, was thereupon arrested and charged with a violation of Section 2 of the ordinance in question. [21, 62]

On Sunday, September 15, the same group of Jehovah's witnesses and other persons assembled in Outwater Park for the third of their series of public meetings. [189] Saia again appeared with his sound equipment on his automobile. The microphone was set up in front of the speaker as on previous occasions. [189] The amplifying apparatus was operated as on former occasions. [232] The talk delivered to the audience on this occasion was entitled "World's Woes—Why Permitted?" [231] Shortly after the speaker began delivery of his talk to the assembly in the park over the Saia sound device, John E. Hull, police officer of the City of Lockport, approached the park, stopped about 500 or 600 feet away from the amplifying device being operated by Saia. [196] Then Hull went on to the Saia car, on top of which were the amplifying devices that were then in operation and use by the speaker. [197] As Hull got closer, the speaking could be heard very distinctly. [200] He asked Saia whether he had a permit to operate the sound device. Saia informed Hull that he had no permit; so the officer pulled the connecting cord between the amplifying and the microphone and stopped operation of the device. [199] He then charged Saia with violation of Section 2 and 3 of the ordinance and arrested him. [31, 190, 200]

On Sunday, September 22, 1946, the fourth and last of the series of public meetings was held by Jehovah's witnesses and a number of invited persons appeared at the park to hear the speaker deliver a talk on the subject "Christians in the Crucible." [172, 234] Also on this occasion Saia was present to provide the speaker with the use of his sound equipment. [230-231] It was set up as on previous occasions for the use of the speaker. [231] It was in operation when, about 20 minutes after the talk began, George Gardner, Sr., a policeman of the City of Lockport, appeared.

[171, 207] He had come to the park and stopped about 200 feet from where the Saia loudspeaker was located. [171, 181] He went over to where Saia was seated in his car equipped with the amplifiers. [171] He asked Saia whether he had a permit. [173] Saia produced his credentials of ordination issued by the Watch Tower Bible & Tract Society. [173, 229] Such, being not considered as a permit by Gardner and his companion officer, Sheehan, was not recognized. [173, 180] Gardner requested Saia to shut off the sound equipment. [173, 181] Saia refused. Gardner cut off the sound equipment and placed Saia under arrest because he did not have a permit required by the ordinance. [174, 181] Thereupon he charged Saia with violation of Sections 2 and 3 of the ordinance. [33]

Testimony of the complaining witnesses varied as to the distance that the talk over the loud speaker could be heard on each occasion. [61, 62, 64, 130, 137, 141, 145, 155, 163, 175, 187, 196, 197] The testimony was that it could be heard from 25 to 500 feet away. [62, 196] However, a majority of the witnesses agreed that the speech over the sound equipment could not be heard intelligibly beyond 250 feet. [175, 177] The sound technician, Joseph Stralker, said speech over the device could be heard intelligibly at 300 feet. [248] He stated that 500 feet audibility was not intelligible. [248] He stated that speech over the device 600 feet distant was hardly audible. [252]

All of the complaining witnesses testified that the meetings were orderly and that the subject matter of the speech was not offensive to them. [127, 133, 138-139, 165, 166, 177, 185, 191, 201] They all admitted that the talks were upon "religious matters". [48, 54, 67, 134, 147, 160, 176, 185] Practically every one of the complaining witnesses admitted having heard church bells ring on Sunday and that they were not offended at the ringing of church bells. [127, 139, 148, 163, 177, 185, 193, 212] In fact, all admitted that the operation of the sound device was not louder than church

bells. [127, 144, 148, 163, 177, 185, 193, 212] Indeed, they admitted that the sound device was not nearly as loud as church bells while ringing on Sunday. [177] None of the witnesses testified that he was prevented from enjoying the facilities of the park by reason of the use of the sound equipment. [132, 138, 139, 141, 177, 147] In fact, many of the complaining witnesses testified that they were not even annoyed by the sound equipment. [132, 133, 138, 142, 147, 177, 185, 202] Some stated that they had no objection to the use of the sound equipment in the park. [161, 186]

One of the complaining witnesses testified that the loudspeakers in the ball park, which are much louder than the sound device used by appellant, did not annoy, even as did not the church bells and factory whistles that are much louder than the sound device used by the appellant. [126-127]

The undisputed evidence showed that Samuel Saia, Walter Reid, Walter M. Hammond, Roy Mort, and Nelson Howell are duly ordained ministers of the gospel. [72, 76, 87, 214, 219, 226, 229, 233, 239] Each testified that he was authorized to represent the Watch Tower Bible & Tract Society, the legal governing body of Jehovah's witnesses. [72, 76-77, 84, 87, 215, 229, 233] Each testified that he considered it to be his bounden duty to ALMIGHTY GOD as a minister of the gospel to preach publicly in the park and to make use of the sound equipment in order to sufficiently amplify the voice of the public speaker so that the message being delivered to the assembled audience could be heard and understood by all in attendance. [70, 75, 77, 82, 223, 224, 225, 234, 241] The appellant and others of Jehovah's witnesses did not desire to flout the law, according to their testimony; but since the mayor had denied the permit to use the sound equipment they regarded his action, as well as the ordinance prohibiting use of the sound equipment, as being contrary to the law of ALMIGHTY GOD. [89, 91, 97, 221, 222] They testified that they believed the law to be

unconstitutional as construed and applied to them. [75, 93, 221, 222] Therefore they, like the apostles of Christ Jesus, chose "to obey God rather than men"[3] and persisted in giving the lecture in the park and simultaneously therewith using the sound equipment. [82, 89, 97, 244]

The undisputed evidence shows that the denial of the permit was not for the purpose of regulation of the use of sound devices in the park. [62, 63, 68, 226, 227]

The evidence shows that the permit was denied for the purpose of censorship, because some persons had objected to Jehovah's witnesses, holding meetings in the park and for that reason the chief of police of the City of Lockport had denied the requested permission for use of the sound equipment in connection with the second series of four lectures to be given at the public meetings in the park during September 1946. [227]

How Issues Raised

In the Police Court of Lockport the appellant, by motions to dismiss, filed at the close of the evidence, contending that the ordinance in question, as construed and applied to authorize his conviction for the use of sound equipment in connection with the delivery of Bible sermons by a minister of the gospel in a public park, was unconstitutional and void in that it abridged appellant's right to freedom of conscience, freedoms of speech, assembly and worship of ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution. [69, 102, 203-204, 253-256]

The judge of the Police Court specifically passed upon the constitutional questions raised by the appellant. The motions were denied. [70, 102-105, 204, 256] The judge of the Police Court wrote a memorandum opinion containing his reasons for holding the ordinance constitutional and

[3] Acts 5:29.

denying the motions made by appellant. [22-23, 33-39, 103-105]

In his affidavit on appeal to the County Court of Niagara County, the appellant attacked the ordinance on the ground that, as it had been construed and applied by the trial court, it abridged his rights of freedom of speech, assembly and worship of ALMIGHTY GOD. [17, 29] These were overruled by the County Court. [257] The County Court affirmed the judgments of conviction by the Police Court of the City of Lockport. [258-259]

In his application, which was duly made to a judge of the New York Court of Appeals, the appellant complained of the judgment of affirmance by the County Court on the grounds that the ordinance, as construed and applied, abridged his rights of freedom of speech, assembly and of worship of ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution. [10] On these grounds a certificate allowing appeal was granted. [4-5]

The contentions of the appellant that the ordinance was unconstitutional as construed and applied were overruled by the New York Court of Appeals and the judgments affirmed. [265-266]

The New York Court of Appeals certified that the constitutional questions were duly raised and considered. [289]

The petition for appeal to this Court, duly filed in the New York Court of Appeals, attacked the constitutionality of the ordinance involved for each and every one of the reasons advanced in the courts below and as hereinbefore set out. [267-268]

In his statement of points relied upon, appearing in the record in these cases, the appellant alleged that the ordinance is unconstitutional as construed and applied because it abridges appellant's rights of freedom of speech, assembly and worship of ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the Constitution. [273-274]

Summary of Argument

The ordinance, on its face and as construed and applied, deprives appellant of his rights to freedom of speech, freedom to communicate information and opinion to others, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

A

Public parks are the natural and proper places for assembly and communication of ideas through speech. In fact this is the only way of reaching millions of people who are not accessible by house-to-house visitation.

B

The right to speak carries the right to be heard. The right to be heard implies the right to use auxiliary devices to reach the hearers in the exercise of speech at assemblies and in public places.

C

Sound amplifying devices are a necessary adjunct to modern-day effective public speaking at assemblies.

D

Freedom to be heard is as vital to freedom of speech as is freedom to circulate to freedom of press.

E

Restricting the abridgment to the use of sound devices may not be justified on the ground that the right of free speech in the park without such auxiliary remains unimpaired.

F

The specious argument leading to a factitious conclusion that the use of sound devices results in forced audience abuse of free speech should be rejected.

G

The ordinance does not regulate as to time, place and manner the use of sound devices ancillary to free speech and is therefore not within the police power of the City of Lockport.

H

There is no showing that the use of the sound device in this case was an abuse of the right of free speech so as to present a clear and present danger to interests that the City of Lockport had the right to protect.

I

The ordinance is presumptively unconstitutional because the State has failed to discharge the burden of proof imposed upon it in civil rights cases in prosecutions where the First Amendment is involved.

J

The police power of the State authorizing the prohibition and censorship of commercial pursuits and activities does not enter here.

K

The ordinance is void because, on its face and as construed and applied, it prohibits the exercise of freedoms of speech, assembly and worship of Almighty God.

L

The ordinance is void because, on its face and as construed and applied, it licenses and censors the exercise of freedoms of speech, assembly and worship of Almighty God.

M

The decisions sustaining anti-noise ordinances, as applied to sound devices used in connection with public speech at assemblies, are not sound.

Argument

The ordinance, on its face and as construed and applied, deprives appellant of his rights to freedom of speech, freedom to communicate information and opinion to others, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

A

Public parks are the natural and proper places for assembly and communication of ideas through speech. In fact this is the only way of reaching millions of people who are not accessible by house-to-house visitation.

Public parks devoted to recreation and the common use of the public, as is Outwater Park, have from time immemorial been used as places of assembly, upon the hustings and in the commons, as far back as the mind of free people can remember. As far back as the memory of free people can extend, the public parks have been used as places for making public speeches upon commercial, political and religious questions. Since the days of the Lord Christ Jesus and His apostles Christian ministers whose lives are devoted to the evangelizing of the people have made use of concourses, market places, hustings and public parks; in fact, any place where a crowd could be gathered and talked to, as a means of preaching the gospel. These forums cannot be denied to persons by censorship laws or prohibitory laws. *Jamison* v. *Texas,* 318 U. S. 413; *Schneider* v. *New Jersey,* 308 U. S. 147; *Hague* v. *C. I. O.,* 307 U. S. 496.

There is a very practical reason why persons use such public places for these purposes. Today millions of people do not remain at home during such hours as are ordinarily devoted to house-to-house calls. The only possible way to

reach those millions of people, under favorable weather conditions, is by going publicly upon the streets and into the parks and other public places.

B

The right to speak carries the right to be heard. The right to be heard implies the right to use auxiliary devices to reach the hearers in the exercise of speech at assemblies and in public places.

If one has the right to use of the parks and streets, to assemble in public meeting, to speak to those assembled and to communicate information and opinion, then certainly one has the right to speak in such a manner as to be heard whether it be on the city streets, at public parks or anywhere else. Just as the right of free press includes the right to distribute, so freedom of speech includes the right to be heard. Any statute or ordinance which seeks to prevent the use of a sound apparatus, in effect, prohibits one from being heard, and, for all practical purposes, enforces a ban on the rights of assemblage and freedom of speech and freedom to communicate information and opinion to others.

C

Sound amplifying devices are a necessary adjunct to modern-day effective public speaking at assemblies.

The Court has knowledge of the changes to which municipalities have been subjected by reason of the industrialization of the nation and the progress of science and civilization. These changing times have brought with them many things which of necessity have disturbed the quiet of the thoroughfares and public places. Today, one exercising the right of assemblage and of free speech on a city thoroughfare or in a public place must overcome the handicaps of

noises generated by mechanical traffic, industries and other persons and instrumentalities using those places. It has, therefore, become a common practice, in the exercise of freedom of speech, of communication and of assemblage, to use mechanical means to amplify the voice.

In cities during the recent war emergency, both the Army and Navy and the United States Civil Service employed loud speakers and sound amplifiers attached to motor vehicles on the city streets to effectively reach people and to make known to the public their need for recruits for the armed forces and for various important war jobs. The police departments of some of the cities have such a sound system permanently attached to their motor vehicles which are used on the city streets in the performance of various duties.

The use of speech in the exercise of these constitutional rights is not static, is not confined to peroration of ancient times. The inhabitant of this land, in his exercise of speech, is as much entitled to use modern-day inventions to augment his exercise of that right as he is in exercising his right of freedom of the press to use modern-day printing machinery. Amplifying devices are as much a part of effective exercise of modern-day speech over the radio and in public places as is paper or the printing press essential for effective exercise of freedom of press. Purely because sound-amplifying devices are relatively new and a departure from traditional practice is no reason for prohibiting their use for lawing purposes any more than would be justifiable the prohibition of use of the printing press because it was relatively modern.

In this day of airplane, jet propulsion, atomic bomb, streamlined trains and automobiles, to say nothing of radio, radar and other electronic developments, a loudspeaking apparatus is fast becoming or already has become a common convenience, if not a necessity, for the effective public speaker. Sound-amplifying devices used by speakers bear a

necessary relationship to freedom of speech and freedom of worship exercised by a preacher acting faithfully and seriously as an obedient servant of his Master (Isaiah 12:6; Matthew 10:27) and cannot be prohibited or censored.

In recent years, it has come to be recognized to all that the use of amplifying devices in radio broadcasting and in public speaking in public places such as auditoriums, halls and parks is a necessary and usual ancillary for effective free speech, speech that is intelligible. Without the use of such devices the right of free speech is definitely and seriously curtailed and impaired, if not frustrated entirely. Especially is this true in many cases where the speakers have weak voices. Accordingly, it can now be said that the use of sound devices is a necessary part of the effective exercise of freedom of speech. Therefore the right to interfere with the use of such amplifying devices is limited to the same rules of restraint and regulation as would apply to any restraint upon the exercise of freedom of speech itself. The mere fact that this is an amplifying device does not alone provide the city with new and extraordinary reasons for prohibiting and censoring the use of such device.

D

Freedom to be heard is as vital to freedom of speech as is freedom to circulate to freedom of press.

These guaranteed rights are not exercised in a vacuum. They naturally and impliedly include the attraction of a crowd. The Court has recognized this with respect to the exercise of freedom of the press. In Ex parte *Jackson*, 96 U. S. 727, 733, the Court, in holding that regulations against the transportation in the mail of printed matter, which is open to examination, cannot be enforced so as to interfere in any manner with the freedom of the press, said:

"Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value."

The same principle applies here. A speech is delivered to an audience. The freedom to make a speech includes the freedom to be heard. The ordinance cannot be saved because it relates to the distribution of speech and not to the enunciation, for liberty of circulating is as essential to that freedom as liberty of speaking. Without the circulation, the enunciation would be of little value. Ex parte *Jackson*, 96 U. S. 727, 733; *Lovell* v. *Griffin*, 303 U. S. 444, 452.

E

Restricting the abridgment to the use of sound devices may not be justified on the ground that the right of free speech in the park without such auxiliary remains unimpaired.

The trial court conceded that the freedoms of expression and assembly of appellant may have been prohibited, but justifies such prohibition on the ground that it leaves untouched his right to express his views orally without the aid of an amplifier. It is well established by a long line of decisions that the restriction of any basic civil right cannot be justified by the fact that other rights remain unimpaired and that the denial of a right in one manner, respect or place may not be warranted by the freedom to exercise that right in other ways, respects or places. See *Schneider* v. *New Jersey*, 308 U. S. 147, 163, where the Court declared: "But as we have said, . . . one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."

F

The specious argument leading to a factitious conclusion that the use of sound devices results in forced audience abuse of free speech should be rejected.

The Court here should not adopt a "forced audience" theory to support the decision below. Certainly there cannot be said to be more of an element of compulsion in the use of a sound amplifier in the exercise of freedom of expression and freedom of assembly than exists when literature is distributed in the exercise of freedom of the press and speech, whether by handing it to a person, leaving it on his doorstep, or sending it through the mails. Nor is there any greater compulsion than can be said to exist in canvassing, soliciting or making house-to-house calls for evangelical or political purposes. *Schneider* v. *New Jersey*, 308 U. S. 147; *Lovell* v. *Griffin*, 303 U. S. 444, *Cantwell* v. *Connecticut*, 310 U. S. 296; Ex parte *Jackson*, 96 U. S. 727. Those are just as much acts of compulsion in the same sense as the use of a sound amplifier.

However, the "forced audience" theory in such circumstances had been entirely vitiated by the decision of the Court in the case of *Martin* v. *Struthers*, 319 U. S. 141. There, appellant, one of Jehovah's witnesses, called at the homes of strangers, knocking on doors and ringing doorbells in order to distribute to the inmates leaflets advertising a public Bible discourse. The city ordinance forbade the summoning of inmates in that manner for that purpose. The Court held the ordinance to be a violation of the constitutional rights to free speech and press. Mr. Justice Black, speaking for the Court, said:

"For centuries it has been a common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meet-

ings. Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community. In the instant case, the City of Struthers, Ohio, has attempted to make this decision for all its inhabitants. The question to be decided is whether the City, consistently with the federal Constitution's guarantee of free speech and press, possesses this power. . . . [¶] . . . This freedom embraces the right to distribute literature, *Lovell* v. *Griffin*, 303 U. S. 444, 452, and necessarily protects the right to receive it. The privilege may not be withdrawn even if it creates the minor nuisance for a community of cleaning litter from its streets. *Schneider* v. *State*, 308 U. S. 147, 162. . . . [¶] . . . Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved." 319 U. S. at pp. 141-142, 143, 146-147.

The City of Lockport does not have the power to determine for all its inhabitants that they do not desire to have expressions of opinion enunciated over sound amplifiers. It must preserve for those who desire to exercise their freedoms of expression and assembly in that manner and for those who are willing listeners their rights so to do, just as it must preserve the right of a distributer of literature and of those willing to receive it. The first duty of the city is to preserve those constitutional privileges. Whatever inconvenience it causes the city, the city must find ways to regulate without invading constitutional rights.

The courts have gone far to protect the right of free speech together with the other basic civil rights from invasion in any degree, even to the extent of leaving them to the caprice of a licensing officer or an electorate. In the case of *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, the Court pointed out that one's right to

life, liberty and property, to free speech, free press, freedom of worship and assembly and other fundamental rights may not even be submitted to a vote and they depend on the outcome of no election. The Court carefully considered the law of the State of West Virginia compelling the flag salute by school children and further pointed out that those freedoms are susceptible of restriction only to prevent grave and immediate danger in which the State may lawfully act and that it is the purpose of the Fourteenth Amendment to the Federal Constitution to reserve those rights from all official control.

G

The ordinance does not regulate as to time, place and manner the use of sound devices ancillary to free speech and is therefore not within the police power of the City of Lockport.

The only permissible limitation upon the exercise of free speech and concomitant freedoms may be said to be, at most, reasonable regulation as to time, place and manner. Ordinances prohibiting or censoring the exercise of these activities have been held uniformly to be unconstitutional. "Ordinances absolutely prohibiting the exercise of the right to disseminate information are, *a fortiori,* invalid." *Jones* v. *Opelika,* 316 U. S. 584, 595-596.

The ordinance in question cuts off entirely from the hearer the right to hear effectively a public speech in a public place. It deprives the speaker of the right to be heard intelligibly by his entire audience. It therefore abridges the rights of freedom of speech, communication and assembly. It certainly is not regulatory as to time, place or manner in which one may use a sound-amplifying device in the city. It does not purport to be a revenue-raising measure to bear any excessive police burdens resulting from the use of sound equipment.

It must be conceded that the public utterances of Je-

hovah's witnesses amplified in the interests of willing listeners come clearly within the category of free speech and assembly guaranteed by the United States Constitution.

In *Blue Island* v. *Kozul*, 379 Ill. 511, 51 N. E. 2d 515, a conviction under a city by-law or regulation providing for the procuring of a license and the payment of a fee was set aside. The City of Blue Island argued that its ordinance was not prohibitory. "It is contended by the city that this is a regulatory ordinance. A municipality may enact regulations in the interests of public safety, health, welfare or convenience, within the limits permitted by law, but in every case this power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe that freedom protected by the United States Constitution and by the Constitution of the State of Illinois. *Cantwell* v. *Connecticut, supra; Schneider* v. *Town of Irvington, supra.* The ordinance is not regulatory. As applied to the facts in this case, the ordinance makes no provision regulating the manner of carrying on the business of peddlers in the city of Blue Island."

The only limitation that is permitted by law upon the exercise of freedom of speech, freedom of press and freedom of worship is that a community may require a stranger to establish his identity and authority to represent his organization. While prohibition and censorship are condemned, this Court has said that laws regulating the exercise of freedom of speech, press and worship are permissible. However, the permissible limit or regulation rather than prohibition or censorship is stated by the Court as follows: "Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The State is likewise free to regulate the time and manner of solicitation generally, in the interests of public safety,

peace, comfort or convenience." *Cantwell* v. *Connecticut*, 310 U. S. 296, 306.

H

There is no showing that the use of the sound device in this case was an abuse of the right of free speech so as to present a clear and present danger to interests that the City of Lockport had the right to protect.

The record is barren of any evidence whatsoever which establishes or from which it might be inferred that attention of passing motorists and pedestrians was so diverted as to create new traffic hazards or that appellant's acts on the occasion of his arrests had that effect. There are many things on the public highways and streets which may similarly divert the attention of motorists and pedestrians, for example, billboards, Burma-Shave signs, window displays, road repairs, airplanes, jet planes, etc. Even a pretty girl has been known to divert the attention of passing motorists. Yet no governing body or court would seriously contend that pretty girls should be barred from the parks, streets and highways. Nor that such other lawful activities could or should be banned for that reason.

There is no such showing here of any sufficiently imminent menace to the State itself or to the public welfare from the use of sound apparatus as to warrant either the legislative body or this court in determining that the use of such apparatus is not appropriate any place in the city of Lockport and for any purpose. Appellant's conduct was not said to involve a breach of the peace, commission of a nuisance, disturbance or impeding traffic. The utterances made over the loud speaker are not asserted to have been abusive, subversive or in any other respect unlawful.

I

The ordinance is presumptively unconstitutional because the State has failed to discharge the burden of proof imposed upon it in civil rights cases in prosecutions where the First Amendment is involved.

Both appellee and the trial court lean upon the doctrine of the protection of public rights and the presumption of constitutionality as a refuge from the constitutional assault here made by appellant. The Police Court of Lockport concedes that the ordinance may deprive appellant of his freedoms of expression and assembly, but seeks to justify it on the basis of the rights of the public to at least a modicum of peace and quiet to which it is entitled.

It is submitted that when a regulation enacted under the police power of a municipality, whether on its face, as applied, or constructively, abridges, prohibits, or infringes upon any of the freedoms guaranteed by the First Amendment to the Constitution, such ordinance or regulation is presumptively invalid; and the burden falls upon the authority asserting the power under the regulation to prove by a preponderance of the evidence that the regulation is a valid exercise of the police power directed at some abuse of the constitutional rights which, unless prohibited or regulated, would constitute a clear and present danger to the health, safety or general security of the community as a whole. The showing of the abuse is a condition precedent to the exercise of the police power where such exercise or power has a tendency to censor, limit, infringe, restrict or prohibit any of the constitutional freedoms. The police power does not even exist in such cases unless there is a clear showing of the abuse. This rule is well stated by Chief Justice Hughes in *De Jonge* v. *Oregon*, 299 U. S. 353:

"The people through their Legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing

with the abuse. The rights themselves must not be curtailed. . . . Therein lies the security of the Republic, the very foundation of constitutional government."

The same rule was effectively supplied by the United States Court of Appeals for the District of Columbia in *Busey* v. *District of Columbia*, 78 App. D.C. 189, 138 F. 2d 592. Mr. Justice Edgerton, speaking for the court, said:

"Freedom of speech, press, and religion are entitled to a preferred constitutional position because they are 'of the very essence of a scheme of ordered liberty.' (*Palko* v. *Connecticut*, 302 U. S. 319, 325) They are essential not only to the persons or groups directly concerned but to the entire community. Our whole political and social system depends upon them. Any interference with them is not only an abuse but an obstacle to the correction of other abuses. (Civil liberties are at present relatively little threatened by governmental action, but in many communities the civil liberties of unpopular groups are greatly threatened by private terrorism. Legal recognition of these liberties tends to discourage this terrorism.) . . . [¶] We think we may hold that when legislation appears on its face to affect the use of speech, press, or religion, and when its validity depends upon the existence of facts which are not proved, their existence should not be presumed; at least when their existence is hardly more probable than improbable, and particularly when proof concerning them is more readily available to the government than to the citizen. The burden of proof in such a case should be upon those who deny that these freedoms are invaded. . . . [¶] . . . No presumption which lacks a probable basis in fact should be permitted to conceal an interference with essential freedoms."

The City of Lockport thus far has failed to show a *real* (as distinguished from imagined) clear and present danger

and has thus not discharged the heavy burden placed upon it where these precious civil rights are infringed.

No evidence was produced here and no showing made of the need for such an ordinance. Until the City has discharged this burden, by proving a clear and present danger of substantial evils to the community, it attempts to apply and enforce the ordinance cannot be sustained.

The Court in the 'labor organizer case' from Texas held that the clear and present danger test must be applied to abridgment of the liberties protected by the First Amendment. *Thomas* v. *Collins*, 323 U. S. 516. In that case the Court said: "Choice on that border, now as always delicate, is perhaps more so, where the usual presumption supporting legislation is balanced by the preferred place given in our scheme of the great, the indispensable democratic freedoms secured by the First Amendment." *Thomas* v. *Collins*, 323 U. S. at pp. 529-530. See also *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 639, *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-153.

Judged by proper standards, it is clear that appellant's conduct, under the circumstances, did not and could not constitute any clear and present danger which would justify an application of the police power that curtails the personal liberties secured by the Federal and State Constitutions.

It is respectfully submitted that the provisions of the ordinance are presumed to be unconstitutional; that the burden falls upon the State to prove to the satisfaction of the Court that it is constitutional; that a clear and present danger to a substantial interest of the community has not been shown; and that the State has failed to sustain this burden and has not established that the ordinance is constitutional.

J

The police power of the State authorizing the prohibition and censorship of commercial pursuits and activities does not enter here.

An ordinance regulating commercial pursuits and activities is one thing, but the application of regulations to conduct such as of appellant here, thereby interfering with his exercise of a constitutional right, is another. There is a difference in degree, which emphasizes the importance of protecting the individual from invasion of his constitutional liberties as distinguished from regulation of purely commercial enterprises. See *Schneider* v. *New Jersey,* 308 U. S. 147, where the Court (at page 163) made the differentiation as follows: "The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers. It is not a general ordinance to prohibit trespassing. It bans unlicensed communication of any views or the advocacy of any cause from door to door . . . " See also *Valentine* v. *Chrestensen,* 316 U. S. 52, 55; *Jamison* v. *Texas,* 318 U. S. 413, 417.

K

The ordinance is void because, on its face and as construed and applied, it prohibits the exercise of freedoms of speech, assembly and worship of Almighty God.

The ordinance in question, in its broad sweep, prohibits speech entirely whether in a public or private place. It seeks to make no distinction as to times, places, purposes or the contents of the utterances which it forbids. It lays down a blanket ban on all outdoor speaking with a sound device, except in *some cases* when it *may be licensed* by the chief of police.

The ordinance here prohibits entirely the exercise of appellant's right of free speech. It can be seen from the decisions of the Court that the ordinance is absolutely prohibitory, in addition to its provisions for censorship.

In *Largent* v. *Texas*, 318 U. S. 418, the regulation under which one of Jehovah's witnesses was convicted required that she obtain a permit from the mayor before calling from door to door in the City of Paris, Texas. In unanimously declaring that the regulation was invalid and prohibitory rather than regulatory, the Court said: "Upon the merits, this appeal is governed by recent decisions of this Court involving ordinances which leave the granting or withholding of permits for the distribution of religious publications in the discretion of municipal officers. It is unnecessary to determine whether the distributions of the publications in question are sales or contributions. The mayor issues a permit only if after thorough investigation he 'deems it proper or advisable'. Dissemination of ideas depends upon the approval of the distributor by the official. This is administrative censorship in an extreme form. It abridges the freedom of religion, of the press and of speech guaranteed by the Fourteenth Amendment." 318 U. S. at p. 422.

In *Jamison* v. *Texas*, 318 U. S. 413, it was argued that because under the law of Texas the City of Dallas owned absolute title to the streets and had the dominion of the landlord under the law over the control thereof, the ordinance prohibiting the distribution of literature upon the streets was valid. That argument was rejected and the conviction of one of Jehovah's witnesses under the ordinance was set aside. The Court said: "They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote

the raising of funds for religious purposes." 318 U. S. at p. 417.

Assuming that the city has the right to reasonably regulate the use of the sound-amplifying device in circumstances like those here involved, as to time, place and manner, this ordinance is not such. It appears on its face to be prohibitory. It does not attempt, either explicitly or implicitly, to license or in any other way regulate or control the use of sound apparatus in the park in the exercise of free speech and the communication of information and views. The ordinance is so sweeping in its ban that it prevents in effect any public outdoor meeting for any purpose whatsoever. It absolutely and unequivocally prevents the communication of views and the exercise of free speech, for it is practically impossible to exercise those rights on public streets or in parks today and be heard without the use of sound amplifiers.

L

The ordinance is void because, on its face and as construed and applied, it licenses and censors the exercise of freedoms of speech, assembly and worship of Almighty God.

This case falls squarely within the rule announced by this Court in *Hague* v. *C.I.O.*, 307 U. S. 496. Insofar as the ordinance provides for police censorship of the use of necessary and ancillary equipment in the exercise of freedom of speech, the case falls within the rule announced by this Court in *Jamison* v. *Texas*, 318 U. S. 413. The mere fact that the ordinance is directed to the use of such sound apparatus on the streets or public places of the City of Lockport does not save it from the constitutional prohibition. It rather serves to condemn it. In the case of *Hague* v. *C.I.O.*, the Court declared unconstitutional an ordinance of Jersey City which sought to license, through the Director

of Safety, public meetings in streets, parks and public places. In denouncing the ordinance, the Court held:

"Whenever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembling, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.

"The privileges of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interests of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation be abridged or denied.

"We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. It does not make comfort or convenience in the use of the streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage.' It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right." 307 U. S. at pp. 515-516.

In *Schneider* v. *New Jersey*, 308 U. S. 147, the Court declared unconstitutional an ordinance of the Town of Irvington which prohibited canvassing, soliciting and distribution of circulars, or other matter, or calling from house to house in that town, without first having reported to and received a permit from the chief of police or other police officer. It was argued that the ordinance and regulation

involved were designed for the purpose of preserving the peace, prohibiting fraud and trespass, and to keep the streets clean and of good appearance. In making its decision, the Court held the ordinance not to be regulatory, but censorial and prohibitory and stated:

"This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restrictions of enjoyment of these liberties.

"In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights. . . .

"As said in *Lovell* v. *City of Griffin, supra* [303 U. S. 444] pamphlets have proved most effective instruments in the dissemination of opinon. And perhaps the most effective way of bringing them to the notice of individuals in their distribution at the homes of the people. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and

unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.

"Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of the citizens; some persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press." *Schneider* v. *New Jersey,* 308 U. S. at pp. 161, 164.

In a subsequent decision, *Cantwell* v. *Connecticut,* 310 U. S. 296, a statute which prohibited solicitation without a permit of money or subscriptions for religious causes, was held to violate the freedom of speech guaranty as applied to one of Jehovah's witnesses who stopped two men on the street, set up a phonograph and played a record attacking a certain religious sect. It was contended that the law was enacted to regulate solicitations for the prevention of fraud and imposition. The Court said:

"*First.* We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty

embodied in that Amendment embraces the liberties guaranteed by the First Amendment. . . . In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. . . . ¶ . . . Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions."

In *Thornhill* v. *Alabama*, 310 U. S. 88, the prohibitory statute there knocked down prevented picketing and going upon private premises. The petitioner picketed upon private premises. The picketing, upon the private premises of the Brown Wood Preserving Company, Inc., was contrary to its wishes, and in defiance of its commands to leave the property. In setting aside the conviction as being an abridgment of freedom of speech and press, the Court said:

"*First.* The freedom of speech and of the press, which are secured by the First Amendment against abridgment by the United States, are among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a state. . . . Mere legislative preference for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative that, when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations. *Schneider* v. *State*, 308 U. S. 147, 161, 162." 310 U. S. at pp. 95-96.

M

The decisions sustaining anti-noise ordinances, as applied to sound devices used in connection with public speech at assemblies, are not sound.

The Police Court of Lockport relied upon the cases of *Cox* v. *New Hampshire,* 312 U. S. 569, and *Hamilton* v. *Montrose,* 109 Colo. 228, 124 P. 2d 757. [35] These cases are not analogous in fact or law to the case at bar. See also *Kovacs* v. *Cooper,* 315 N. J. L. 64, 50 A. 2d 451, aff'd December 30, 1947, by New Jersey Court of Errors and Appeals. Filed in this Court as No. 505, October Term, 1947.

In the *Hamilton* case the Supreme Court of Colorado rested its decision mainly on the facts produced by testimony of witnesses, which were found to show that the conduct of the defendant amounted to a breach of the peace and disturbed lawful occupants and property owners in the neighborhood. The court there specifically stated (109 Colo. at p. 237): "Applying, therefore, the same standards that were used in the *Cantwell* case [310 U. S. 296], we reach an opposite conclusion in the instant case from that announced in the *Cantwell* case because of the differing facts."

There was no evidence of that type produced in the case *sub judice,* no similar factual situation, and no finding of facts upon which either of the courts below could base the decision.

The decisions of the courts below and that of the Colorado Supreme Court in *Hamilton* v. *Montrose,* are ably analyzed in the clear and cogent dissent of Mr. Justice Otto Bock in the *Hamilton* case. The dissenting opinion differed with both the findings of fact and conclusions of law and declared (109 Colo. at p. 239):

"The constitutional questions raised are of more importance. Within the last decade the Supreme Court of the United States, under the able leadership of the then

Chief Justice Charles Evans Hughes, showed in an affirmative way how the civil liberties of the individual may be vindicated and preserved. Practically all of the cases cited in the majority opinion indicate this definite trend. What freedom of speech, the press, and exercise of religion actually mean can be determined only when these principles are tested in specific instances. The tendency now is not to widen the conflict between liberty and authority, but to reconcile the relationship between these governmental principles. Would a statute or ordinance which absolutely prohibits the use of any loud-speaking device under any circumstances be an abridgment of free speech? I say it certainly would. Just as the right of free press includes the right to 'distribute', so freedom of speech includes the right to be 'heard'. The use of a loud-speaker, under the circumstances, is not a nuisance per se. . . . A loud-speaking device is a great convenience to those who desire to hear and be heard, and bears a necessary relationship to freedom of speech. Its use may reasonably be regulated as to time, place and manner. *Cantwell* v. *Conn.*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352. . . . Concepts of civil liberty, such as freedom of speech and the press, are relative and not absolute, and vary with time and circumstances; and so, amplification devices, in recent years, have gone largely into use, and have their necessary rights. That a city may regulate the use of such sounding devices and protect itself 'from concentrated and continuous cacophony' already has been indicated above. The inertia which sometimes exists in municipalities in protecting individual liberty must be overcome by affirmative action in the enactment of laws that will not abridge, but reconcile, the exercise of free speech and religion, with the authority to reasonably regulate it in the interest of the public safety, health, welfare or convenience . . .

"The majority of the court here relies on the case of *Cox* v. *New Hampshire,* 312 U. S. 569, 61 S. Ct. 762, 764,

85 L. Ed. 1049, 133 A. L. R. 1396, to justify its opinion. In that case the sole charge against appellants was that they were 'taking part in a parade or procession' on public streets without a permit as the statute required. In referring to that case in *Trojello* v. *Walenburg,* 198 Colo. 427, 118 P. 2d 1081, we said that it contained an excellent statement of the power of a municipality to impose regulations in the use of public streets." *Hamilton* v. *Montrose,* 109 Colo. 228, 239-240, 242.

As was shown by Mr. Justice Bock, *Cox* v. *New Hampshire,* 312 U. S. 569, is not in point and does not support the conclusion reached by either the Colorado court or the courts below here.

The ordinances involved in the *Hamilton* case and in this case have been erroneously compared with and simulated to the New Hampshire statute involved in the *Cox* case. It should be remembered that the New Hampshire Supreme Court found that the statute in the *Cox* case, as construed by the court, was a regulatory measure as to time and place. It was a revenue-raising measure to provide for policing of parades and placing a portion of the burden of expense of managing the city's traffic during a parade upon the holders of the parade. The statute in the *Cox* case did not attempt to prohibit or censor. The ordinance in this case both prohibits and censors.

In *Brachey* v. *Maupin,* 277 Ky. 467, 126 S. W. 2d 881 and *Maupin* v. *Louisville,* 284 Ky. 195, 144 S. W. 2d 237, the ordinances involved did not entirely prohibit the use of sound trucks, but rather attempted to regulate their use. In the former case, the attempted regulation was through designating certain areas comprising 5% of the city through which sound trucks could not be operated, letting free the remaining 95% and fixing certain hours for such operation. In the latter case, the regulation was through a license of sound trucks by the chief of police. We do not pass judgment on whether such regulations were reasonable and

proper, but merely point to the fact that those ordinances were not entirely prohibitory as is the one here questioned.

As a matter of fact, the Court of Appeals of Kentucky, in *Brachey* v. *Maupin*, pointed out that the Kentucky courts had previously stricken out two ordinances, one passed in 1931 and the other in 1935, which were entirely prohibitory and not regulatory and stated (277 Ky. at p. 472):

"We are unable to agree that the former ordinances and the one presently involved are of the same character and kind. It is our view that they are radically different. The former two ordinances sought to entirely prohibit the operation of a sound truck in the City of Louisville at any time or place, whereas the amendatory ordinance here involved is not so broad in its scope and seeks to regulate rather than prohibit."

The Lockport ordinance does not reach speech, over a sound device, which is obscene, offensive to public morals or advocates unlawful conduct. Nor does it make comfort or convenience in the use of streets or parks the standard of official action. It is comprehensive in its ban of the use of sound apparatus and forbids it for any and every purpose unless the chief of police can be inveigled into granting a permit. There is no restriction in its application with respect to time and place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants or the misuse or obstruction of the streets or parks. It prohibits or entirely licenses or censors, in effect, the use of a device which is a great convenience to those who desire to hear and be heard and has a necessary relationship to the exercise of freedom of speech and assembly.

Although the rights previously enumerated are not absolute, and the State in the exercise of its police power may punish the abuse of these freedoms, it cannot under the guise of regulation abridge or infringe upon them.

Conclusion

The terms of the ordinance providing for prohibition and censorship are identical to the censorship and prohibitory provisions of other ordinances invalidated by former decisions of this Court. No distinction can be made between the condemned provisions of this ordinance and the ordinances involved in the former decisions of the Court because there is involved the use of a sound device. The use of a sound device ancillary to exercise of free speech at an assembly is not *per se* an abuse of free speech. The limit of the police power is to deal with the abuse. Possibility of abuse can not be avoided by prohibiting or censoring the use of the device. *De Jonge* v. *Oregon*, 299 U. S. 353 (1937); *Schneider* v. *New Jersey*, 308 U. S. 147 (1939).

Because the sound device is a modern-day invention not known to speakers of ancient times does not withdraw its use from the shield of the Constitution. The Constitution is a living document that is fully capable of coping with the vicissitudes of life and the times through new applications. The printed leaflets or pamphlets cannot be censored or prohibited because their wider distribution through the rotary press has made them noxious to many people. By force of the same reason the amplification of the human voice in speech before an assembly is no ground for the denial by law of use of sound devices.

The ordinance on its face, and as construed and applied by the courts below, does not purport to be a regulatory law. No attempt is made by the ordinance or the authorities enforcing it to regulate the volume of sound, the time of use, the manner, the place or the number of sound devices that may be used. The face of the ordinance and the record as to its application and enforcement shows indisputably that it is a prohibitory ordinance with a proviso for censorship by the Chief of Police. The fact that it censors and prohibits an adjunct to free speech which is necessary in order to

make it effective rather than prohibit and censors the entire right of speech altogether does not save it. The Constitution prohibits abridgment. Its restraints are not confined to mere prohibition or censorship of the entire right. Anything which shortens, burdens or curtails the right of free speech is prohibited by the Constitution. It should be apparent to all that the denial of the use of the sound device is an abridgment and curtailment of the effective full right of free speech to an assembly.

There being an abridgment of the right of free speech at the assembly of the persons in Outwater Park in Lockport by the arrest, prosecution and conviction of the appellant because of his use on the four consecutive Sundays in question the sound device it is necessary to set the convictions aside.

WHEREFORE it is respectfully submitted that the judgments of the courts below should be reversed, the convictions set aside and the prosecutions ordered dismissed.

HAYDEN C. COVINGTON
Counsel for Appellant

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Supreme Court of the United States

OCTOBER TERM 1947

No. 504

SAMUEL SAIA, *Appellant*

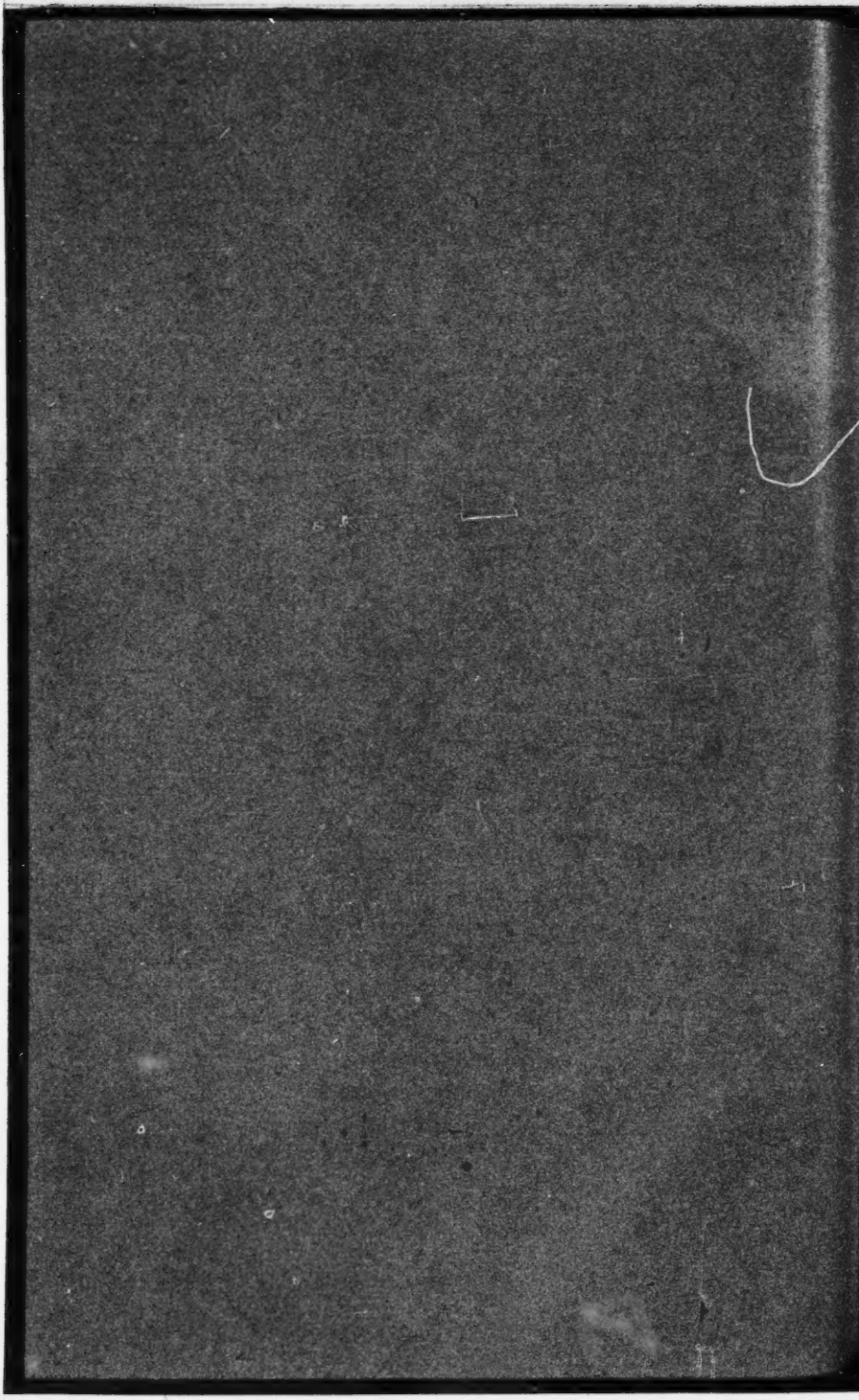
v.

THE PEOPLE OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF
THE STATE OF NEW YORK

REPLY BRIEF
FOR APPELLANT

HAYDEN C. COVINGTON
Counsel



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REPLY BRIEF FOR APPELLANT

MAY IT PLEASE THE COURT:

The summary disposition of the issues by the appellee has failed to clarify. Attempted undue simplification of the problem presented by speedily reaching a factitious conclusion that the ordinance "regulates" obfuscates the issues.

The ordinance is not one that prohibits a nuisance, for operation of sound devices is not *per se* a nuisance. It is not the ordinary type of ordinance prohibiting excessive noises. It is not a zoning law regulating the use of sound-amplifying devices. The use of the term "regulation" by the appellee is a mere euphemism.

The appellee has simulated this case to that of *Cox* v. *New Hampshire*, 319 U. S. 569. The *Cox* case involved a

law exacting a fee, rather than a tax, requiring paraders to bear some of the expense and burden of policing parades. Also the law was designed, according to the construction placed upon it by the Supreme Court of New Hampshire, to regulate the time, place and manner of holding parades so as to avoid interference with traffic upon the streets. There was a clear relationship between the law and the concomitant interference with traffic by a parade.

The situation here is entirely different. The law does not exact a license fee to bear the expense of regulation. In fact, the law does not purport to regulate the use of sound devices. There is no direct or indirect connection between regulation of traffic in Lockport and the use of sound devices. The ordinance does not have the remotest relationship to control of traffic. It bans the use of all sound devices except such uses permitted by the chief of police and prohibits the use of such devices in such a manner as to annoy and disturb persons in public parks and upon the streets.

The appellee conjures up a spectre of anarchy to follow an invalidation of the ordinance of the City of Lockport. The appellee asserts that confusion will be the inevitable result of a decision favorable to appellant. It is contended that, without the ordinance in question, thirty or forty of such sound devices could be in operation at one time in one public place, each employing the greatest possible volume in an effort to drown out all others. (See Brief for Respondent, p. 6) But the scene is not as horrible and hopeless as appellee would have it appear. The hands of the City of Lockport are not tied. The police power is not shackled. The domain of the police power is broad enough to allow any regulation as to time, manner and the number of such devices permitted to be used at any one place and time in the City of Lockport.

There may be, of course, certain zones of quiet under regulatory laws such as areas immediately adjacent to

hospitals, unless, however, the hospitals are built adjacent to a public park in which event the right of the City to maintain peace and quiet for hospital patients should yield to the constitutional use of parks for assembly and free speech. Also there may be times of the day in every neighborhood when it is desirable to maintain peace and quiet. Such would allow the city to prohibit the use of sound devices during such times as, for instance, at night time during normal hours of rest and sleep.

Moreover, a city may require mechanical inspection of sound-amplifying devices so as to prevent their carrying speech beyond the arena of the listeners or the boundary of public parks.

But the Lockport ordinance is not a regulation tailored to fit any such problem. It does not regulate so as to control, but it attempts to regulate so as to prohibit and censor. Merely because the use of sound devices may be regulated as to time and manner certainly does not justify laws that prohibit and censor the use of such devices under the guise of regulation. The problem of excessive noise may be controlled by the city in any number of ways. But certain it is that, because the police power extends to regulation and control of excessive noise, it does not mean that the city may hamstring or emasculate completely the use of sound-amplifying devices in connection with public assemblies.

A more reasonable attitude toward the regulation of sound devices in cities is reflected by the publication "Radio and Municipal Regulation", 1940, issued by the National Institute of Municipal Law Officers, in co-operation with the United States Conference of Mayors. (See pp. 28-34) A copy of this report, which includes a model ordinance for the regulation of sound devices, is printed as an appendix to this reply brief. The report is referred to and made Appendix A of this reply brief for the purpose of showing the attitude of the National Institute of Municipal Law Officers and the United States Conference of Mayors on

this and related problems. However, any views that are less liberal and that are more restrictive of the use of sound devices than those expressed in the Brief for Appellant and this Reply Brief are not adopted by appellant.

In discharging its delicate and difficult task of weighing the police power of regulation on one side of the scale of justice against the heavy constitutionally secured right of free speech and assembly, extra weights should not be thrown by the Court on the police power side of the scale because of the sound-amplifying device employed.

A consideration of the modern-day use of sound devices ancillary to the exercise of free speech at public assemblies should lead the Court to as liberal a view in protecting the use of sound devices as the Court has assumed in protecting wide distribution of printed pamphlets as an adjunct to the freedom of the press.

The specious argument of appellee that the right to hold a public meeting in the park is not curtailed and that the right of Jehovah's witnesses to distribute literature has not been interfered with should not be considered in determining the validity of the ordinance.

The argument that one may hold a public meeting and at the same time be prohibited the use of sound-amplifying devices is identical to the argument heretofore condemned and rejected by this Court: "But, as we have said, . . . one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider* v. *New Jersey*, 308 U. S. 147, 161, 163.

It is the common and accepted policy of the smaller and less wealthy political and evangelistic organizations to make use of the small assembly in public parks or on private lots under the enlarged tent. Especially is this practice common in the summertime in many parts of the country. The sound-amplifying device is uniformly used at such gatherings.

The problem of reaching the ear of so many little groups of people through free speech and public assembly is especially important to the poor and small campaigner. It is necessary to leave open the free use of every device that makes effective communication of information and opinion at such assemblies. The use of sound devices is the only means of small and poor evangelists to effectively reach as large an audience as possible.

It is no answer to say that the radio, the public press or local assembly halls are available. These means are rarely accessible to the poor or unpopular campaigner or group. Frequently a person or group with an unorthodox message is denied the channel of the radio and public press by boycott or refusal of the operators of radio stations to allow time and owners of newspapers to sell space for purveying a message disliked. Thus oftentimes the well financed as well as the poor are denied access to such large channels of diffusion of knowledge.

That such avenues may be available to some, such as the big popular, orthodox religious organization, the opulent commercial organizations or the Government, does not militate against the necessity to keep the small artery of the small campaigner on political and religious subjects open to his small audiences. Free speech is not available if it is said that the speaker can rent a hall, lease radio time or buy space in the newspaper instead of using the sound-amplifying device.

The tent for the evangelist and the assembly for the campaigner are traditional and primitive methods but are still commonly used in this country, especially in rural areas. To make this common, yet ancient, method of communication of information and opinion effective, the sound-amplifying device is absolutely necessary.

Many a good and effective speaker often is found to have a weak voice. If he were denied the right to use sound-

amplifying devices, he would be barred completely from speaking to his audience.

Indeed even the best public speakers and great campaigners in state and national political contests would be silenced and cut off completely from their audiences at public assemblies if they were denied the use of sound-amplifying devices. Without a sound-amplifying system it would have been impossible for Franklin D. Roosevelt to reach his great visible audiences at Shibe Park in Philadelphia, Soldier Field in Chicago and Fenway Park in Boston during the 1944 presidential campaign. See Appendix B.

The use of sound device is not confined to campaigners on political and religious questions. It is also quite commonly used by labor organizations in presenting their side of the controversy during strikes and in an effort to get members and support. See the Jurisdictional Statement and the Memorandum on Behalf of the Congress of Industrial Organizations and Certain of its Affiliated Organizations, Amici Curiae in *Kovacs* v. *Cooper*, No. 505, October Term, 1947.

WHEREFORE, for the reasons stated in Brief for Appellant and in this Reply Brief, the judgment of the court below should be reversed and the prosecutions ordered dismissed.

HAYDEN C. COVINGTON
Counsel for Appellant

Appendix A

Radio and Municipal Regulations

NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS
Report No. 62, Washington, 1940
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VIII. "NOISE" PROHIBITIONS APPLICABLE TO THE USE OF RADIO RECEIVING SETS

Nearly every city has an ordinance to prevent the causing or making of unnecessary noise which disturbs the comfort or repose of persons of ordinary sensibilities under conditions making such noise a public nuisance. An example of such an ordinance provision is Section 22 of Ordinance No. 1940 of the City of Pasadena, California, reading as follows:

> Section 22. *Unnecessary Noises.* It is hereby declared to be a nuisance and it shall be unlawful for any person, firm or corporation, to make, cause or suffer or permit to be made or caused, upon any premises owned, occupied or controlled by him or it in the City of Pasadena, any unnecessary noises or sounds which are physically annoying to persons of ordinary sensitiveness or which are so harsh, or so prolonged or unnatural, or unusual in their use, time or place as to occasion physical discomfort to the inhabitants of said city, or any number thereof.

With the advent of radio and its use by nearly everyone, cities began enacting ordinances directed to the specific abuses of the use of this new noise device. Some of these ordinances are also directed to the use of radio receiving sets for commercial advertising purposes by the use of loud-speakers on store fronts or the use of sound trucks.

A. Ordinance Regulations Applicable to the General Use of Radio Receiving Sets

There is one type of ordinance containing regulations applicable to the general use of radio receiving sets so as to disturb the comfort of persons desiring to sleep after a reasonable hour at night. The Mobile, Alabama, ordinance fixes 10 P. M. to 7 A. M., and the ordinance of Boston 12 P. M. to 7 A. M. as the "quiet" period while other ordinances prohibit at all times unnecessary noise injurious to the public health and which constitutes a public nuisance. The ordinances of Mobile, Boston, Glendale, Calif., Hartford, Conn., and Pontiac, Mich., are here set forth as examples of this type of ordinance.

These municipal ordinances are an exercise of the city's police power to prevent and eliminate noise nuisances. It has been held that a radio is not a nuisance per se yet it may become a nuisance. *Weber* v. *Mann,* 42 S. W. (2d) 492 (Tex. Civ. App. 1931). In this case use of a radio loud-speaker at a roadside soft drink stand was involved.

The case of *Brachey* v. *Maupin,* 277 Ky. 467, 126 S. W. (2d) 881, 121 A. L. R. 969 (1939) digested at p. 29 *infra* sustains a noise ordinance designed to prevent public nuisances. The court held reasonable the prohibition of unnecessary noise from sound trucks during the time people usually sleep. In *People* v. *Caponigri,* 6 N. Y. Supp. (2d) 577 (Magistrate's Court, Borough of Brooklyn 1938) Park Districts rules regulating and prohibiting as a nuisance the use of voice, sound amplifiers or other mechanical devices in certain places was sustained under the city's police power.

In *Stodder* v. *Rosen Talking Machine Co.,* 241 Mass. 245, 135 N. E. 251 (1922) the court granted an injunction against operation of a loud-speaker used by a music store to broadcast phonograph records for advertising purposes. Neighboring merchants had brought suit for the injunction claim-

ing that the noise from the loud-speaker made complainants' concentration on work difficult, irritated their nervous systems, injured their health, and otherwise interfered with the conduct of their business. In *Stodder* v. *Rosen Talking Machine Co.*, 247 Mass. 60, 141 N. E. 569 (1923) the court adjudged the music store owner in contempt of court for violating the decree in the case just referred to. Other cases granting injunctions on the theory that noise from loud-speakers is a nuisance are: *Grantham* v. *Gibson*, 41 Wash. 125, 83 P. 14 (1905) and *Honnicutt* v. *Eaton*, 184 Ga. 485, 191 S. E. 919 (1937).

ORDINANCE OF MOBILE, ALABAMA

Article 2

901. *Loud Playing of Radios, Phonographs, etc., Prohibited.*—It is hereby prohibited and made unlawful for any person within the City of Mobile or the police jurisdiction thereof, between the hours of ten o'clock P. M. and seven o'clock A. M., to play any radio, phonograph or other musical instrument in a manner so loud as to be calculated to disturb the sleep of ordinary persons in near-by residences, or so loud as to unreasonably disturb or interfere with the peace and comfort of the occupants of a near-by residence or residences.

902. *Penalty.* Any person violating any provision of this ordinance, upon conviction, shall be punished by a fine not exceeding one hundred dollars ($100.00), and by a sentence to imprisonment or hard labor not exceeding six months, one or both.

903. *Holding Clause.* If any section or provision of this ordinance shall be held invalid, such holding shall not invalidate any other section or provision hereof.

ORDINANCE OF BOSTON, MASSACHUSETTS

Ordinances of 1931 Chapter 4

Prohibiting Certain Unnecessary Noises

Section 1. No person owning or having the care, custody or possession of any musical instrument, radio set, phonograph, victrola or other machine or device for producing or reproducing sound shall operate or use or permit to be operated or used such machine or device in such a manner as to disturb the peace and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such machine or device between the hours of twelve o'clock midnight and seven o'clock a. m. in such a manner as to be plainly audible at a distance of one hundred feet from the building or structure in which it is located shall be *prima facie* evidence of a violation of this ordinance. Nothing

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herein contained shall be construed to prohibit playing by a band or orchestra in a hall, building or in the open air, but this exception shall not apply to a reproduction of such playing by any machine or device.

Section 2. Any person, firm or corporation violating the provision of this ordinance shall be subject to a penalty not exceeding twenty dollars for each offense.

ORDINANCE OF GLENDALE, CALIFORNIA

Ordinance No. 1514

An Ordinance regulating the use of loud speakers.

Be it ordained by the Council of the City of Glendale:

Section 1. That it shall be unlawful for any person, copartnership, association, firm, or corporation knowingly or wantonly to use or operate, or to cause to be used or operated any mechanical device, machine, apparatus, or instrument for intensification or amplification of the human voice or any sound or noise in any public or private place in such manner that the peace and good order of the neighborhood is disturbed or that persons owning, using, or occupying property in the neighborhood are disturbed or annoyed.

Section 2. That any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the City Jail of the City of Glendale or in the County Jail of the County of Los Angeles for a period of not more than six (6) months, or by both such fine and imprisonment.

ORDINANCE OF HARTFORD, CONNECTICUT

Sec. 358, Revised Ordinances of 1931

When any radio or similar device, in the opinion of the board of health, disturbs, or tends to disturb, the health of persons in its vicinity, the board of health may declare the operation of this radio or similar device to be a public nuisance and dangerous to health, and may prohibit its operation or issue such orders concerning the time or manner of its operation as, in the opinion of the board of health, may be necessary; . . .

ORDINANCE OF PONTIAC, MICHIGAN

Ordinance No. 809

Regulating Noise Making Devices

Adopted June 4, 1929
Effective June 14, 1929

An Ordinance relative to the use of Noise Making Devices.

The City of Pontiac ordains:

Section 1. The operating or maintaining of noise making, noise amplifyyng or noise producing instruments or devices by which the people or good order of the neighborhood is disturbed, is hereby declared a nuisance. It shall be unlawful for any person, firm or corporation, by himself or another, to operate or maintain any radio, phonograph, player piano, calliope or other noise making amplifying or noise producing instrument or device in any public or private place in such manner or by which the people and good order of the neighborhood is disturbed, or persons owning or occupying property in the neighborhood are disturbed.

Section 2. Any person, firm or corporation violating the provisions of this ordinance shall be punished by a fine not to exeed one hundred dollars ($100.00), or imprisonment in the County Jail for not more than ninety days, or both such fine and imprisonment, in the discretion of the court.

A model ordinance covering all abuses growing out of the use of radio receiving sets is set forth hereinafter.

The ordinances of the Cities of Richmond, Va., and Madison, Wis., are examples of ordinances intended to prevent all unnecessary noise but containing sections specifically applicable to the use of radio receiving sets. While

these general noise ordinances are not set forth in this report copies will be furnished to any city attorney by the *National Institute of Municipal Law Officers* upon request.

B. Use of Radio Receiving Sets in Advertising by Loud-speakers and Sound Trucks

Twenty-eight ordinances regulating the use of radio receiving sets in advertising by loud-speakers and sound trucks have been used in this study.[1] These ordinances in general forbid the use of loud-speakers on radios to attract crowds for commercial purposes or for commercial advertising in general. The ordinances of the Cities of Louisville, Ky., St. Paul, Minn., Toledo, Ohio, Topeka, Kan., Troy, N. Y., Oak Park, Ill., Knoxville, Tenn., and White Plains, N. Y., are hereinafter set forth as examples of such ordinances. There is also set forth the comprehensive ordinance of the City of Duluth, Minn., regulating and licensing the business of selling or furnishing of broadcasting services within the City. A model ordinance covering all abuses growing out of the use of radio receiving sets is set forth hereinafter.

In *Brachey* v. *Maupin*, 277 Ky. 467, 126 S. W. (2d) 881, 121 A. L. R. 969 (1939) the plaintiff sought to restrain his prosecution under an ordinance regulating operation of sound trucks on the streets of the City of Louisville. The ordinance provided as follows:

[1] Atlantic City, N. J.; Buffalo, N. Y.; Canton, Ohio; Colorado Springs, Colo.; Dayton, Ohio; Des Moines, Iowa; Detroit, Mich.; Duluth, Minn.; Glendale, Calif.; Knoxville, Tenn.; Lincoln, Neb.; Los Angeles, Calif.; Oak Park, Ill.; Plainfield, N. J.; Portland, Ore.; Rockford, Ill.; Sacramento, Calif.; Saginaw, Mich.; Saint Paul, Minn.; Salt Lake City, Utah; San Antonio, Tex.; San Diego, Calif.; Seattle, Wash.; Toledo, Ohio; Topeka, Kan.; Troy, N. Y.; Utica, N. Y.; White Plains, N. Y.

"It shall be unlawful for any person, firm or corporation to operate or cause to be operated any vehicle or

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truck known as a sound truck, when such operation includes the sounding of or causing to be sounded, any bell, bells or horn, or amplifier, or loud-speaker or radio or other mechanical sound or noise producing instruments or appliance or music or any other sound producing instruments or appliances operated by hand, steam, air or electricity or other means upon any of the streets of the City of Louisville, lying within the area bounded by the Ohio River, Preston Street, Breckinridge Street and Eighth Street, at any hour or time of the day or night; and it shall be unlawful for any person, firm or corporation to operate or cause to be operated any such vehicle or truck in the manner hereinabove described within two city blocks or city squares of any hospital sanitarium or sanatorium at any hour or time of the day or night, and it shall be unlawful to operate or cause to be operated any such vehicle or truck in the manner above described at any other place or places within the corporate limits of the City of Louisville, except between the hours of nine A. M. and six P. M."

The Court held the ordinance valid and reversed a judgment for the plaintiff. Concluding that the plaintiff's sound truck was a potential nuisance, and when in use, an actual nuisance, the Court held that there could be no doubt of the right of the city council to enact the ordinance as a police power regulation for the protection and safety of citizens of the city. The court accepted the city's evidence

that sound trucks increased the hazards attendant upon use of city streets and affected the well-being of persons within the restricted areas. The Court held that the right of the city to prohibit business in a limited district was well settled and declared that an ordinance so providing was regulatory, not prohibitory. The prohibition of the use of the trucks during the time people usually slept was likewise held to be a reasonable exercise of the police power.

Another case directly in point is *People* v. *Caponigri*, 6 N. Y. Supp (2d) 577 (Magistrate's Court Borough of Brooklyn 1938) involving similar noise regulations.

In some cases the courts have upheld municipal ordinances prohibiting advertising of other than the truck owner's own products by advertising signs upon the outside of trucks using the public streets. *People* v. *Kearns*, 5 N. Y. Supp. (2d) 590, (N. Y. Sup. Ct. 1938); *Noll* v. *Griffin*, 100 Fla. 152, 129 So. 511 (1930); *Fifth Avenue Coach Co.* v. *New York City*, 221 U. S. 467, 31 Sup. Ct. 709, 55 L. ed. 815 (1911); *Chicago Park District* v. *Canfield*, 370 Ill. 447, 19 N. E. (2d) 376 (1939). See generally *McQuillin Municipal Corporations*, § 988.

ORDINANCE OF ST. PAUL, MINNESOTA

C. F. No. 44666—Ordinance No. 6012

An Ordinance prohibiting the use of radio instruments or musical instruments within any building in the City of St. Paul where the sound therefrom is cast directly upon the public streets for the purpose of advertising or attracting the attention of the passing public, and declaring such instruments to be a nuisance.

The Council of the City of St. Paul does ordain:

1294. Section 1. Hereafter it shall be unlawful for any person to maintain and operate in any building in the City of St. Paul any radio device or musical instrument

where the sound therefrom is cast directly upon the public streets of the City of St. Paul and where such device is maintained and operated for advertising purposes or for the purpose of attracting the attention of the passing public.

1295. Section 2. Any such instrument or device operated in the manner prescribed in Section 1 hereof and for the purposes mentioned in said section, is hereby declared to be a nuisance, punishable, by a fine of not exceeding One Hundred Dollars, or by imprisonment for not exceeding ninety days.

Section 3. This ordinance is hereby declared to be an emergency ordinance rendered necessary for the preservation of the public peace, health and safety.

Section 4. This ordinance shall take effect and be in force from and after its passage and publication.

Passed by the Council April 5, 1923.
Approved April 5, 1923.

ORDINANCE OF TOLEDO, OHIO

An Ordinance No. 9347

Prohibiting any device, radio, or other apparatus emitting a noise which constitutes a nuisance.

Be it ordained by the Council of the City of Toledo:

Section 1. That no person shall erect or locate any device, apparatus, radio, ticker or other noise or noise emitting device, in the front part of his premises or in front of his premises in the City of Toledo for general advertising purposes of soliciting trade or soliciting attention to any goods, wares, merchandise, instrument, or device offered for sale, which shall, by mechanical or electrical means, emit any sounds or noises so as to annoy and disturb passers-by on the public thoroughfares.

Section 2. That no person shall equip any vehicle that is operated upon any public street or thoroughfare of the

City of Toledo, with any device, apparatus, radio, ticker, or other noise emitting device which shall, by mechanical or electrical means, emit any sounds or noises so as to annoy or disturb passers-by on the public thoroughfares; providing that this section shall not apply to vehicles in parades, circuses and/or special celebrations if permits have been first procured from the Director of Public Safety.

Section 3. That any such device, apparatus, radio, ticker or noise emitting device, as described in the foregoing sections, shall constitute a nuisance.

Section 4. That the word "person," as used in this ordinance, shall be construed to mean any natural person, firm or corporation. That the word "operated," as set forth in Section 2 of this ordinance, shall be construed to include any vehicle standing upon any public street or thoroughfare.

Section 5. That Sections 1 and 2 of this ordinance shall

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be construed independently, and if one of such sections is declared invalid, it shall not affect the validity of the other.

Section 6. Any person who violates any of the provisions of this ordinance shall, upon conviction, be fined for the first offense, not more than twenty-five ($25.00) dollars, and for each additional offense, not more than fifty ($50.00) dollars.

Section 7. That Ordinance No. 8413, passed October 20th, 1930, be and the same is hereby repealed.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed June 20, 1932.

JOSEPH WAWRZYNIAK,
President Pro Tem. of Council

Attest: A. D. Payne, Clerk of Council.

ORDINANCE OF TOPEKA, KANSAS

Ordinance No. 6818

An Ordinance making it unlawful to play or operate or use upon the public streets or alleys of the City of Topeka, any device known as a loud-speaker or sound amplifier; calliope, or any purported musical instrument; providing penalties for the violation thereof, and repealing Ordinance No. 6212, approved March 4, 1932.

Be it ordained by the Board of Commissioners of the City of Topeka:

Section 1. That it shall be unlawful for any person, firm, society or corporation, either as principal, agent or employee, to play, use or operate for advertising purposes, or for any other purpose, on the streets or alleys of the City of Topeka, any device known as a loud-speaker or sound amplifier, or radio with a loud-speaker or sound amplifier, or any other instrument known as a calliope or any instrument of any kind or character which emits therefrom loud and raucous noises.

Section 2. That any person, firm, society or corporation or anyone acting for or on behalf of any of said persons, violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $5.00 nor more than $25.00 for each offense.

ORDINANCE OF TROY, NEW YORK

An Ordinance to regulate the maintenance and operation in any building or on any premises the use of radio and other mechanical devices.

The City of Troy, in Common Council convened ordains as follows:

Section 1. It shall be unlawful for any person to main-

tain and operate in any building or on any premises in the City of Troy any radio device or mechanical musical instrument or device of any kind whereby the sound therefrom is cast directly upon the public streets and places and where such device is maintained and operated for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated in or upon such premises that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public place or of persons in neighboring premises.

Section 2. This ordinance shall take effect immediately.

Approved as to form, May 15, 1930.

T. STEWART HUBBARD,
Corporation Counsel.

Passed June 5th, 1930.

ORDINANCE OF OAK PARK, ILLINOIS

The Revised Municipal Code of Oak Park of 1937

23.03. Advertising by Radio, Phonograph or Other Mechanical Device. Any person, firm or corporation, who operates or causes to be operated upon any premises within the Village of Oak Park any talking machine, radio or other mechanical device for the purpose of advertising any goods, wares, merchandise or of attracting attention and inviting the patronage of any person to any business whatsoever in such a way as to disturb the peace, and good order, of society or disturb the peace of any person, firm or corporation in the ordinary conduct of business shall be guilty of a misdemeanor.

ORDINANCE OF KNOXVILLE, TENNESSEE

Ordinance No. 290

An emergency ordinance to amend Ordinance No. 96 passed July 3, 1928, entitled "An emergency ordinance to regulate the use of radios, loud-speakers, phonographs and other musical or noise making instruments or devices in connection with any business.

WHEREAS, The Council of the City of Knoxville, did on July 3, 1928, pass Ordinance No. 96 with the foregoing caption and reading as follows:

> WHEREAS, Various operators of business of the City of Knoxville use or play different types of musical instruments such as radios, loud-speakers, phonographs and other musical or noise making instruments or devices in connection with business, and
>
> WHEREAS, An emergency exists in that the use of such instruments or devices should be prohibited in the interest of the public health and welfare, now, therefore,
>
> *Be it ordained by the Council of the City of Knoxville:*
>
> Section 1. That radios, loud-speakers, phonographs and other such stationary musical or noise making instruments or devices shall not be used in connection with any business in the City of Knoxville unless the same are more than forty (40) feet from any public street or sidewalk, provided this ordinance shall not apply to places where booths are maintained or other methods used so such instruments cannot be heard from the streets and provided further that it is not the intention of this ordinance to prohibit the use

of musical instruments in homes or by beggars on the streets.

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Section 2. That any violation of this ordinance shall be and is hereby declared a misdemeanor and punishable by a fine of not less than $5.00 nor more than $50.00.

Section 3. That this ordinance shall take effect from and after its passage, the public welfare requiring it.

J. A. FOWLER
President Officer of the Council

W. H. STAPLETON, Recorder

and

WHEREAS, The foregoing ordinance is broader than the public health and welfare requires, and

WHEREAS, An emergency exists in that the existence of said ordinance is interfering with the conduct of the radio, phonograph and musical instrument business in the City, now, therefore,

Be it ordained by the Council of the City of Knoxville, That the foregoing Ordinance No. 96 be amended in the following particulars, to wit:

That Section 1 of the said ordinance be eliminated and there be inserted in its place and stead the following, to wit:

"That speakers upon radios, phonographs and other musical instruments or devices shall not be used on the outside of a building on any public street in the City of Knoxville, nor shall any radio, phonograph or other musical instrument on the inside of a building be operated so as to constitute a nuisance to adjoining property or to people upon the public streets or sidewalks, provided that it is

not intended that this ordinance apply to the use of musical instruments in homes or by beggars on the streets."

This ordinance shall take effect from and after its passage, the public welfare requiring it.

JAMES A. TROUT,
President Officer of the Council

W. H. STAPLETON, Recorder

Passed first and final reading: May 20, 1930.

ORDINANCE OF WHITE PLAINS, NEW YORK

An Ordinance regulating the use of phonographs, mechanical pianos and radio receivers and prohibiting annoying sounds therefrom.

(Adopted May 20, 1929)

The Common Council of the City of White Plains, by virtue of the power and authority vested in it by law, hereby ordains and enacts as follows:

Section 1. No person shall knowingly permit upon any portion of premises owned or leased by him, or under his control, which is occupied or used for business or commercial purposes, any phonograph, mechanical piano or any instrument for the reception of sounds transmitted by wireless transmission, commonly known as radio receivers, which device or instrument has especially attached amplifiers which make or emit loud noises, and which said phonograph, mechanical piano or radio receiver is so placed and operated that the sounds coming therefrom can be heard by travelers on the street, to the annoyance or inconvenience of such travelers or of persons in neighboring premises or which shall cause persons to gather in front of such premises. This shall not be construed as prohibiting the use of radio amplifiers emitting loud noises during unusual national, state or municipal events, such as presidential

and/or gubernatorial elections and inaugurations or national sporting events such as are commonly known as "World Series" or any unusual event of local interest for the advancement of radio.

Section 2. Any person or persons violating the provisions of this ordinance shall, upon conviction thereof, be liable for each offense to a fine of not more than ten dollars or by imprisonment for not more than ten days or by both such fine and imprisonment.

Section 3. This act shall take effect immediately.

ORDINANCE OF DULUTH, MINNESOTA

Ordinance No. 6034

By Commissioner Culbertson (by request)

An Ordinance to regulate and license the business of selling or furnishing broadcasting service within the corporate limits of the City of Duluth; to define certain terms, and to provide penalties for violations of such ordinance.

The City of Duluth does ordain:

Section 1. That it shall be unlawful for any person, either directly or indirectly, or by himself or through another, to engage, within the corporate limits of the City of Duluth, in the business of selling or furnishing, or otherwise providing sound broadcasting service, unless thereunto first licensed by the City Council of the City of Duluth in accordance with the terms of this ordinance.

Section 2. That for the purpose of this ordinance, the following terms shall have the following meaning:

(a) "Person"—Any natural person and any firm, copartnership, corporation, association or company however or wherever created, existing or organized.

(b) "Sound Broadcasting Service"—The use of sound broadcasting devices which broadcast commercial advertising or other announcements in or over the public highways or public grounds of the City of Duluth, either in, from or

on a moving vehicle, or otherwise, by means of any recording equipment, sound truck, amplifier, phonograph, or other sound equipment.

(c) "Sound Truck"—Any vehicle propelled on wheels and used for and in connection with carrying on the business of selling, furnishing or otherwise providing sound broadcasting service.

Section 3. That before any person shall be granted a license to engage in such business, he shall file with the City Clerk an application, in writing, stating therein the name and address of such applicant, the address of the place of business

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of such applicant, a brief description of the type of vehicle and broadcasting equipment to be used in connection with the business of the applicant, the name of the manager, director or other officer of such applicant who shall have the direct and immediate control of the business of the applicant, together with such other information as the Council may from time to time require; and in addition thereto, the applicant shall accompany such application with the sum of $10.00, which sum is hereby declared to be the annual license fee for conducting the business of selling, furnishing or otherwise disposing of sound broadcasting service. In the event that the applicant is denied a license, the amount of money accompanying such application shall be immediately returned to the applicant by the proper officers of the City of Duluth without further act upon the part of the City Council. All licenses granted under this ordinance shall expire on April 30th in each year; and no licenses shall be issued for a sum less than $5.00. Such application shall be immediately referred for investigation to the Commissioner of Public Safety, who shall report the result of such investigation to the City Council, whereupon it may refuse or grant a license to such applicant.

Section 4. That during the period of time from May 16th to October 15th, inclusive, the licensee shall be permitted to conduct such broadcasting business on Superior Street, First Street and Second Street, from Eighth Avenue East to Eighth Avenue West, inclusive, from 12:00 noon to 1:00 P. M., and from 4:30 P. M. to 5:30 P. M.; and during the period from October 16th to May 15th, inclusive, such licensee may conduct such business in the aforesaid district from 12:00 noon to 1:00 P. M. and from 5:00 P. M. to 6:00 P. M.

Section 5. That except as provided in Section 4 of this ordinance, the licensee may conduct such business in all other parts of the City for three consecutive hours at any time between the hours of 8:00 A. M. and 8:00 P. M., except that the vehicle or other device being used at the time for the carrying on of such business shall not, if standing still, broadcast for more than five consecutive minutes in any one place while so standing; and except that if the licensee shall make written request to the City Council for permission to broadcast after 8:00 P. M., stating in such application the reason or necessity for requiring such permit, the Council may, upon investigation of such request, grant a temporary permit to such licensee to conduct such business after the hour of 8:00 P. M. under such regulations as the Council may determine.

Section 6. That it shall be unlawful for any licensee to operate any sound truck within one block of any hospital, public or parochial school; nor shall any person operating a sound truck broadcast sound therefrom within two blocks of any other sound truck then being used for broadcasting. That no sound truck shall broadcast in such manner as to produce sound audible for a greater distance than one block from such sound truck.

Section 7. That nothing contained in this ordinance shall be construed to prevent the use of a sound truck or sound broadcasting device as defined in this ordinance, or

otherwise, in connection with a funeral procession or religious services, provided, however, that no sound truck or sound broadcasting device shall be operated for broadcasting purposes within one block of any house of worship, nor in such manner as to produce sound audible for a greater distance than one block from such sound truck, nor shall any sound truck or sound broadcasting device used in connection with such religious services broadcast for more than five consecutive minutes while standing still in any one block when such truck or device is being used in or upon any public highway; nor shall the terms of this ordinance be construed to prevent the production of music in connection with any parade authorized under any provision of law; nor shall such ordinance prevent any musical performance upon any public grounds, when a permit therefor has first been obtained from the City Council of the City of Duluth; nor shall such ordinance prevent the use of amplifiers or other sound-producing instruments in connection with any athletic, competitive or recreational event held on public playgrounds, athletic fields or in public parks under consent of municipal authority or the authority of the Board of Education of the City of Duluth; nor shall it apply to police and fire apparatus while used in the performance of public duty; nor shall such ordinance prevent any person who has obtained from the City Council a license to exhibit a circus, menagerie, dog and pony show, or similar exhibition, from using a sound producing device for the purpose of advertising said exhibition under such restrictions as the City Council may provide.

Section 8. That nothing contained in this ordinance shall be construed to prevent any person from using sound broadcasting devices or amplifiers in connection with the broadcast of any speech or lecture from any building between the hours of 8:00 P. M. and 11:30 P. M.

Section 9. That no such license shall be transferred without the approval of the City Council; and every appli-

cation for transfer of license shall be accompanied by the sum of $3.50, which is the estimated cost of publishing the resolution authorizing such transfer. Each such license may be revoked by the Council for cause; and without excluding other causes of revocation, the Council shall revoke such license if the licensee therein or any person acting on behalf of such licensee shall violate the terms of this ordinance or any ordinance of the City of Duluth or statute of the State of Minnesota relating to the preservation of the public peace, good order and welfare of said City of Duluth.

Section 10. That the provisions of this ordinance are hereby declared to be separable; and if any part or provision thereof shall be declared or adjudged to be invalid, such declaration or adjudication shall not affect or invalidate the remaining parts or provisions of such ordinance.

[P. 34]

Section 11. That any person violating any of the provisions of this ordinance, shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by a fine of not more than $100.00, or by imprisonment in the County Jail for not more than eighty-five days. Each violation shall constitute a continuing offense, and upon conviction thereof, the person guilty of each of such violations shall be punished in accordance with the terms of this section.

Section 12. That the licensee shall not use or operate more than one sound truck for sound broadcasting service at any time upon or in any of the public highways or public grounds of the City of Duluth.

Section 13. That this ordinance shall take effect and be in force thirty days from and after its passage and publication.

MODEL ORDINANCE OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS TO PREVENT ABUSES IN THE USE OF RADIO RECEIVING SETS AND OTHER SOUND PRODUCING OR SOUND REPRODUCING DEVICES

An Ordinance to prevent the using of radio receiving sets, musical instruments, phonographs or other machines or devices for the producing or reproduction of sound so as to cause unnecessary and harmful noise, and to provide a penalty for the violation of this ordinance.

WHEREAS, The use or playing of radio receiving sets, musical instruments, phonographs or other machines or devices for the producing or reproduction of sound so as to make such use or playing audible outside of the house, building, structure or vehicle between the hours of eleven o'clock P. M. and seven o'clock A. M. disturbs the peace and comfort of the inhabitants of this City and constitutes a public nuisance; and

WHEREAS, The use or playing of radio receiving sets, musical instruments, phonographs, loud-speakers or sound amplifier or other machines or devices to emit sound for advertising purposes or to attract the attention of the public to the annoyance and inconvenience of the public constitutes a public nuisance, now therefore

Be it ordained by the City Council of the City of.....

Section 1. *Definition of "Person."* The word "person" as used herein shall include the singular and the plural and shall also mean and include any person, firm, corporation, association, club, co-partnership, society, or any other organization.

Section 2. *Unnecessary Sound from Radio, etc. Prohibited.* No person owning or having the care, custody or possession of any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or the reproducing of sound shall play, use, operate, or

permit to be played, used or operated such set, instrument, phonograph, machine or device in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of eleven o'clock P. M., and seven o'clock A. M. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be *prima facie* evidence of a violation of this ordinance.

Section 3. *Loud Speakers, Amplifiers for Advertising, etc. Prohibited. Exception stated.* No person owning or operating any building, structure or vehicle shall play, use, operate or permit to be played, used or operated any radio receiving set, musical instrument, phonograph, loud-speaker, sound amplifier, or other machine or device for the producing or reproducing of sound for the purpose of advertising or attracting the attention of the public to such building structure or vehicle. This section and Section 2 hereof shall not be construed as prohibiting the use of sound amplifiers, loud speakers, or other devices emitting loud noises during unusual and non-commercial national, state or municipal events of general public interest.

Section 4. *Penalties for Violation.* Any person who violates any provisions of this ordinance shall be deemed guilty or a misdemeanor, and upon conviction thereof shall be punishable by a fine of not exceeding $500.00 or imprisonment for not more than six months. Each person shall be deemed guilty of a separate offense for each day during any portion of which any violation of the provisions of this ordinance is committed, continued or permitted.

Section 5. *Separability.* It is the intention of the City Council that each separate provision of this ordinance shall

be deemed independent of all other provisions herein, and it is further the intention of the City Council that if any provision of this Act be declared to be invalid, all other provisions thereof shall remain valid and enforceable.

Appendix B

[SHIBE PARK, Philadelphia]

[Excerpt from New York Times, Saturday Oct. 28, 1944, page 1:]

PHILADELPHIA, Oct. 27—President Roosevelt, in fighting mood, gave tonight to 50,000 cheering Pennsylvanians crowded into Shibe Park an accounting, marked by no apologies or reservations, of his stewardship as Commander in Chief of the armed forces in a war which has led to twenty-seven D-days of "triumphant success" on battlefronts 13,000 miles apart.

[SOLDIER FIELD, Chicago]

[Excerpt from New York Times, Sunday Oct. 29, 1944, page 1:]

PRESIDENT OFFERS POST-WAR PROGRAM FOR AIDING BUSINESS

Addressing 100,000 in Chicago Soldier Field, He Pledges Prosperity in Peace

CHICAGO, Oct. 28—President Roosevelt, in a bid for Illinois' twenty-eight electorial votes made directly to an estimated 110,000 voters filling Soldier Field tonight and to an outside overflow throng of 150,000, pledged himself to a post-war security program which would keep the United States a country of high pay and adequate return for farm and factory products. . . .

Soldier Field was packed solidly tonight from the ground to the top row. It could not begin to hold the outpouring. A larger number than the 110,000 who filled every seat and left a row of standees chattering around the upper rim, were outside packed hundreds deep on the parking areas around the stadium.

. . . The President, as on last night at Shibe Park rally in Philadelphia, spoke from his automobile which had been run up to the platform. He spoke hatless. . . .

[FENWAY PARK, BOSTON]

[Excerpt from New York Times, Sunday November 5, 1944, page 1:]

BOSTON, Nov. 4—President Roosevelt, in the final major, round-up of his campaign for re-election at Fenway Park tonight, declared that his opponent, Governor Dewey, had revealed in his campaign "a shocking lack of trust in America" and "faith in democracy."

Never before in his lifetime, Mr. Roosevelt told a roaring and applauding crowd which crowded and overflowed the ball park, had a campaign been filled with "such misrepresentation, distortion and falsehood."

. . . It appeared that all of the 45,000 crowded into the grandstand and bleachers took up the chant, as the cheers died down:

"We want Roosevelt!" . . .

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 504

SAMUEL GALE,

Appellant,

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

[illegible] S. Mason,
[illegible] Allen T. Parsons,
Counsel for Appellee.

NEW YORK COURT OF APPEALS

PEOPLE OF THE STATE OF NEW YORK

against

SAMUEL SAIA

(Four Cases Consolidated on Appeal)

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

MEMORANDUM IN OPPOSITION

Now comes the Appellee in opposition to the contentions of the Appellant and contends that there is no substantial jurisdictional question involved.

The cases here presented for consideration involve the alleged violation on four different occasions September 1st, September 8th, September 15th and September 22nd, 1946, of the City of Lockport Penal Ordinance No. 38, Sections 2 and 3 in that the Defendant did on the above dates at Outwater Park, a public park in the City of Lockport, maintain and operate on an automobile a radio device and loud speaker whereby the sound therefrom was cast directly on the streets and public places in said City of Lockport, New York. It was charged that the said radio device was maintained for the purpose of attracting the attention of the passing public and the people in said park, and the sounds

coming therefrom could be heard to the annoyance or inconvenience of travellers upon the street and the users of said public park and neighboring premises.

The basis of the charge in each case is that the said defendant violated the above mentioned ordinances in that he failed to obtain a permit or permission from the Chief of Police prior to using said radio device.

The ordinance in question is entitled "PROHIBITING UNNECESSARY AND UNUSUAL NOISES." Section 2 of the Ordinance reads:

> "Sec. 2. Radio devices, etc. It shall be unlawful for any person to maintain and operate in any building, or on any premises or on any automobile, motor truck or other motor vehicle, any radio device, mechanical device, or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travellers upon any street or public places or of persons in neighboring premises."

Section 3 reads:

> "Sec. 3. Exception. Public dissemination, through radio loud speakers, of items of news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission obtained from the Chief of Police."

POINT I

The Defendant by His Actions Did Violate the City Penal Ordinance

The Defendant admitted on the trial of this case that he operated a loud speaker in a public place on four separate

occasions without first obtaining a permit from the Chief of Police. In addition to this testimony at the trial there was other evidence that the sound coming from this mechanical device was cast directly upon the streets, and that it could be heard to the annoyance or inconvenience of travellers upon public places or of persons in neighboring premises.

It seems obvious for purposes of this appeal, therefore, that there was evidence before the Trial Court upon which it could well find a violation of Section 2 of the said Ordinance, since the Defendant by his own testimony did not comply with the Exception as set forth in Sec. 3. It is further obvious that the Trial Court could well find the Defendant guilty of both Sections of the Ordinance in question, since the Trial Court had the opportunity to hear the testimony and observe the witnesses. This Court would be incorrect in reversing the Decision of the Trial Court on the facts unless the Decision was clearly against the weight of the evidence, and such situation certainly does not exist in this case.

Point II

The City Penal Ordinance Is Constitutional

The only real question before this Court upon this appeal is whether or not Lockport Penal Ordinance No. 38, Sections 2 and 3 is constitutional.

The City of Lockport by this Ordinance obviously does not deny the right of the Jehovah's witnesses to distribute literature on the streets, or to assemble in a public place to have a public meeting.

The United States Supreme Court cases together with the case of *State* v. *Barber*, 289 N. Y. 378 as cited by the Defendant are not on point in these cases.

In the case at Bar there is no prohibition of the activities of the Jehovah witnesses in distributing printed matter, or

preaching the Gospel of Jehovah, or having meetings in public places, but there is a prohibition simply as to the use of a radio loud speaker at said meetings so that the sounds therefrom are cast on public places without first obtaining a permit from the Chief of Police. This permit is not required for Jehovah witnesses alone but is required for all faiths and denominations and for all activities carried on in a public place within the said City of Lockport where it is intended to use a radio loud speaker.

The City of Montrose, Colorado, had an ordinance similar to the ordinance of the City of Lockport requiring a permit before loud speaking devices could be used within the city limits. In a case involving the violation of that ordinance the Supreme Court of the State of Colorado held as follows:

> "That the ordinance itself did not set up religious censorship. It is aimed solely at the prevention of noises that become nuisances. In the administration of the ordinance in the present case we see no attempt, overt or hidden, to over-ride constitutional guaranties. We believe the people of Montrose have the right to protect themselves from concentrated and continuous cacophony." *Hamilton* v. *City of Montrose,* 109 Co. 228, 124 Pac. 757.

The case above cited is on all fours with the case here being considered.

It is clearly within the police power of the city to so regulate the use of loud speaking devices, that the people of the city will not be subjected to continuous noise at all hours of the day and night and in public places. Such an ordinance is necessary to prevent conflicts and duplication in the use of these devices.

In the case of *Cox* v. *the State of New Hampshire,* 312 U. S. 569, Chief Justice Hughes upheld the right of a municipality to require a license before conducting a parade or

procession upon the public streets. In that case Justice Hughes stated that the Defendants had not been deprived of their right of freedom of worship, or freedom of speech, or freedom of assembly.

In the above cited case Chief Justice Hughes said:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinion."

It is obvious that the prohibition set up in City Ordinances in question does not abridge constitutional liberty since it does not bear any necessary relationship to the freedom to speak, write, print or distribute information or opinion.

The Appellant contends that this restriction is a curb upon freedom of speech. Such contention if consistently carried to its ridiculous extreme could produce a chaotic situation. Based upon that premise a city could not in any way restrict the number of public devices used at any

one time or the volume thereof. With no regulations in force it would then be possible within a city the size of Lockport for thirty or forty of these radio devices to be in operation at one time in public places, and each one employing the greatest possible volume in order to drown out the others and attract the attention of the passing public to itself. If to attempt to impose restrictions and regulations upon the use of these devices is unconstitutional because it restricts freedom of speech, obviously such a situation as above depicted could be entirely possible. The question as to whether or not the Chief of Police in this case arbitrarily abused his discretion in refusing to grant the defendant a license is not properly before this Court. The Defendant takes the position that the ordinance in and of itself is unconstitutional. The Respondent in this case asserts that the city has just as much constitutional right to impose reasonable regulations on the use of noise making devices within the city limits as it does to enact zoning ordinances and regulating traffic. It is not aimed at the curtailment of constitutional liberties but simply imposes reasonable regulations on their exercise.

WHEREFORE the Appellee prays that the appeal herein be dismissed or that this Court refuse to entertain the appeal because of the lack of a fundamental or real jurisdictional issue.

Respectfully submitted,

JOHN S. MARSH,
District Attorney of Niagara County;
ALAN V. PARKER,
Of Counsel,
United Building,
Niagara Falls, New York.

FILE COPY

Supreme Court, U. S.
FILED
MAR 19 1948
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1947.

No. 504.

SAMUEL SAIA,

Appellant,

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF FOR RESPONDENT.

WILLIAM E. MILLER,
District Attorney of Niagara County,
Court House,
Lockport, N. Y.

ALAN V. PARKER,
Of Counsel.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

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Supreme Court of the United States

October Term, 1947.

No. 504.

SAMUEL SAIA,

Appellant,

v.

THE PEOPLE OF THE STATE OF NEW YORK,

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APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF FOR RESPONDENT.

Statement.

This is an appeal from the Judgment of Affirmance of the Court of Appeals of the State of New York.

The cases here presented for consideration involve the alleged violation on four different occasions September 1st, September 8th, September 15th and September 22nd, 1946, of the City of Lockport Penal Ordinance No. 38, Sections 2 and 3 in that the Defendant did on the above dates at Outwater Park, a public park in the City of Lockport, maintain and operate on an automobile a radio device and loud speaker whereby the sound therefrom was cast directly

on the streets and public places in said City of Lockport, New York. It was charged that the said radio device was maintained for the purpose of attracting the attention of the passing public and the people in said park, and the sounds coming therefrom could be heard to the annoyance or inconvenience of travellers upon the street and the users of said public park and neighboring premises.

The basis of the charge in each case is that the said defendant violated the above mentioned ordinances in that he failed to obtain a permit or permission from the Chief of Police prior to using said radio device.

The ordinance in question is entitled *"PROHIBITING UNNECESSARY AND UNUSUAL NOISES."* Section 2 of the Ordinance reads:

> "Sec. 2. Radio devices, etc. It shall be unlawful for any person to maintain and operate in any building, or on any premises or on any automobile, motor truck or other motor vehicles, any radio device, mechanical device, or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travellers upon any street or public places or of persons in neighboring premises."

Section 3 reads:

> "Sec. 3. Exception. Public dissemination, through radio loud speakers, of items of news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission obtained from the Chief of Police."

POINT I.

The defendant by his actions did violate the City Penal Ordinance.

The Defendant admitted on the trial of this case that he operated a loud speaker in a public place on four separate occasions without first obtaining a permit from the Chief of Police. In addition to this testimony at the trial there was other evidence that the sound coming from this mechanical device was cast directly upon the streets, and that it could be heard to the annoyance or inconvenience of travellers upon public places or of persons in neighboring premises.

It seems obvious for purposes of this appeal, therefore, that there was evidence before the Trial Court upon which it could well find a violation of Section 2 of the said Ordinance, since the Defendant by his own testimony did not comply with the Exception as set forth in Sec. 3. It is further obvious that the Trial Court could well find the Defendant guilty of both Sections of the Ordinance in question, since the Trial Court had the opportunity to hear the testimony and observe the witnesses. This Court would be incorrect in reversing the Decision of the Trial Court on the facts unless the Decision was clearly against the weight of the evidence, and such situation certainly does not exist in this case.

POINT II.

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The only real question before this Court upon this appeal is whether or not Lockport Penal Ordinance No. 38, Sections 2 and 3 is constitutional.

The City of Lockport by this Ordinance obviously does not deny the right of the Jehovah's witnesses to distribute literature on the streets, or to assemble in a public place to have a public meeting.

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In the case at Bar there is no prohibition of the activities of the Jehovah witnesses in distributing printed matter, or preaching the Gospel of Jehovah, or having meetings in public places, but there is a prohibition simply as to the use of a radio loud speaker at said meetings so that the sounds therefrom are cast on public places without first obtaining a permit from the Chief of Police. This permit is not required for Jehovah witnesses alone but is required for all faiths and denominations and for all activities carried on in a public place within the said City of Lockport where it is intended to use a radio loud speaker.

The City of Montrose, Colorado had an ordinance similar to the ordinance of the City of Lockport requiring a permit before loud speaking devices could be used within the city limits. In a case involving the violation of that ordinance the Supreme Court of the State of Colorado held as follows:

> "That the ordinance itself did not set up religious censorship. It is aimed solely at the prevention of noises that become nuisances. In the administration of the ordinance in the present case we see no attempt, overt or hidden, to over-ride constitutional guaranties. We believe the people of Montrose have the right to protect themselves from concentrated and continuous cacophony." Hamilton vs. City of Montrose, 109 Co. 228—124 Pac. 757.

The case above cited is on all fours with the case here being considered.

It is clearly within the police power of the city to so regulate the use of loud speaking devices, that the people of the city will not be subjected to continuous noise at all hours of the day and night and in public places. Such an ordinance is necessary to prevent conflicts and duplication in the use of these devices.

In the case of Cox vs. the State of New Hampshire, 312 U. S. 569, Chief Justice Hughes upheld the right of municipality to require a license before conducting a parade or procession upon the public streets. In that case Justice Hughes stated that the Defendants had not been deprived of their right of freedom or worship, or freedom of speech, or freedom of assembly. In the above cited case Chief Justice Hughes said:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safe-guarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinion."

It is obvious that the prohibition set up in City Ordinances in question does not abridge constitutional liberty since it does not bear any necessary relationship to the

freedom to speak, write, print or distribute information or opinion.

The Appellant contends that this restriction is a curb upon freedom of speech. Such contention if consistently carried to its ridiculous extreme could produce a chaotic situation. Based upon that premises a city could not in any way restrict the number of public devices used at any one time or the volume thereof. With no regulations in force it would then be possible within a city the size of Lockport for thirty or forty of these radio devices to be in operation at one time in public places, and each one employing the greatest possible volume in order to drown out the others and attract the attention of the passing public to itself. If to attempt to impose restrictions and regulations upon the use of these devices is unconstitutional because it restricts freedom of speech, obviously such a situation as above depicted could be entirely possible. The question as to whether or not the Chief of Police in this case arbitrarily abuses his discretion in refusing to grant the defendant a license is not properly before this Court. The Defendant takes the position that the ordinance in and of itself is unconstitutional. The Respondent in this case asserts that the city has just as much constitutional right to impose reasonable regulations on the use of noise making devices within the city limits as it does to enact zoning ordinances and regulating traffic. It is not aimed at the curtailment of constitutional liberties but simply impose reasonable regulations on their exercise.

Respectfully submitted,

WILLIAM E. MILLER,
District Attorney of Niagara County.

ALAN V. PARKER,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

No. 504.—October Term, 1947.

Samuel Saia, Appellant, v. The People of the State of New York.	Appeal From the Court of Appeals of the State of New York.

[June 7, 1948.]

Mr. Justice Douglas delivered the opinion of the Court.

This case presents the question of the validity under the Fourteenth Amendment of a penal ordinance of the City of Lockport, New York, which forbids the use of sound amplification devices except with permission of the Chief of Police.[1]

Appellant is a minister of the religious sect known as Jehovah's Witnesses. He obtained from the Chief of Police permission to use sound equipment, mounted atop

[1] The ordinance, insofar as pertinent, reads as follows:

"Section 2. Radio devices, etc.—It shall be unlawful for any person to maintain and operate in any building, or on any premises or on any automobile, motor truck or other motor vehicle, any radio device, mechanical device, or loud speaker or any device of any kind whereby the sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public places or of persons in neighboring premises.

"Section 3. Exception.—Public dissemination, through radio, loudspeakers, of items of news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission obtained from the Chief of Police."

Appellant's conduct was regarded throughout as falling within the types of activity enumerated in § 3. We take the ordinance as construed by the State courts.

his car, to amplify lectures on religious subjects. The lectures were given at a fixed place in a public park on designated Sundays. When this permit expired, he applied for another one but was refused on the ground that complaints had been made. Appellant nevertheless used his equipment as planned on four occasions, but without a permit. He was tried in Police Court for violations of the ordinance. It was undisputed that he used his equipment to amplify speeches in the park and that they were on religious subjects. Some witnesses testified that they were annoyed by the sound, though not by the content of the addresses; others were not disturbed by either. The court upheld the ordinance against the contention that it violated appellant's rights of freedom of speech, assembly, and worship under the Federal Constitution. Fines and jail sentences were imposed. His convictions were affirmed without opinion by the County Court for Niagara County and by the New York Court of Appeals, 297 N. Y. 659, — N. E. 2d —. The case is here on appeal.

We hold that § 3 of this ordinance is unconstitutional on its face, for it establishes a previous restraint on the right of free speech in violation of the First Amendment which is protected by the Fourteenth Amendment against State action. To use a loud-speaker or amplifier one has to get a permit from the Chief of Police. There are no standards prescribed for the exercise of his discretion. The statute is not narrowly drawn to regulate the hours or places of use of loud-speakers, or the volume of sound (the decibels) to which they must be adjusted. The ordinance therefore has all the vices of the ones which we struck down in *Cantwell* v. *Connecticut*, 310 U. S. 296; *Lovell* v. *Griffin*, 303 U. S. 444; and *Hague* v. *C. I. O.*, 307 U. S. 496.

In the *Cantwell* case a license had to be obtained in order to distribute religious literature. What was reli-

gious was left to the discretion of a public official. We held that judicial review to rectify abuses in the licensing system did not save the ordinance from condemnation on the grounds of previous restraint. *Lovell* v. *Griffin, supra,* held void on its face an ordinance requiring a license for the distribution of literature. That ordinance, like the present one, was dressed in the garb of the control of a "nuisance." But the Court made short shrift of the argument, saying that approval of the licensing system would institute censorship "in its baldest form." In *Hague* v. *C. I. O., supra,* we struck down a city ordinance which required a license from a local official for a public assembly on the streets or highways or in the public parks or public buildings. The official was empowered to refuse the permit if in his opinion the refusal would prevent "riots, disturbances or disorderly assemblage." We held that the ordinance was void on its face because it could be made "the instrument of arbitrary suppression of free expression of views on national affairs." 307 U. S. p. 516.

The present ordinance has the same defects. The right to be heard is placed in the uncontrolled discretion of the Chief of Police. He stands athwart the channels of communication as an obstruction which can be removed only after criminal trial and conviction and lengthy appeal. A more effective previous restraint is difficult to imagine. Unless we are to retreat from the firm positions we have taken in the past, we must give freedom of speech in this case the same preferred treatment that we gave freedom of religion in the *Cantwell* case, freedom of the press in the *Griffin* case, and freedom of speech and assembly in the *Hague* case.[2]

[2] *Cox* v. *New Hampshire,* 312 U. S. 569, 577–578, did not depart from the rule of these earlier cases but re-emphasized the vice of the type of ordinance we have here. *Davis* v. *Massachusetts,* 167 U. S. 43, was distinguished in the *Hague* case, 307 U. S. pp. 514–516,

Loud-speakers are today indispensable instruments of effective public speech. The sound truck has become an accepted method of political campaigning. It is the way people are reached. Must a candidate for governor or the Congress depend on the whim or caprice of the Chief of Police in order to use his sound truck for campaigning? Must he prove to the satisfaction of that official that his noise will not be annoying to people?

The present ordinance would be a dangerous weapon if it were allowed to get a hold on our public life. Noise can be regulated by regulating decibels. The hours and place of public discussion can be controlled. But to allow the police to bar the use of loud-speakers because their use can be abused is like barring radio receivers because they too make a noise. The police need not be given the power to deny a man the use of his radio in order to protect a neighbor against sleepless nights. The same is true here.

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which likewise involved an ordinance regulating the use of public streets and parks. It was there said, "We have no occasion to determine whether, on the facts disclosed, the *Davis* case was rightly decided, but we cannot agree that it rules the instant case. Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied."

We adhere to that view. Though the statement was that of only three Justices, it plainly indicated the route the majority followed, who on the merits did not consider the *Davis* case to be controlling.

Any abuses which loud-speakers create can be controlled by narrowly drawn statutes. When a city allows an official to ban them in his uncontrolled discretion, it sanctions a device for suppression of free communication of ideas. In this case a permit is denied because some persons were said to have found the sound annoying. In the next one a permit may be denied because some people find the ideas annoying. Annoyance at ideas can be cloaked in annoyance at sound. The power of censorship inherent in this type of ordinance reveals its vice.

Courts must balance the various community interests in passing on the constitutionality of local regulations of the character involved here. But in that process they should be mindful to keep the freedoms of the First Amendment in a preferred position. See *Marsh* v. *Alabama*, 326 U. S. 501, 509.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 504.—October Term, 1947.

Samuel Saia, Appellant, *v.* The People of the State of New York.	Appeal From the Court of Appeals of the State of New York.

[June 7, 1948.]

Mr. Justice Frankfurter, with whom Mr. Justice Reed and Mr. Justice Burton concur, dissenting.

The appellant's loud speakers blared forth in a small park in a small city.[1] The park was about 1,600 feet long and from 250 to 400 feet wide. It was used primarily for recreation, containing benches, picnic and athletic facilities, and a children's wading pool and playground. Estimates of the range of the sound equipment varied from about 200 to 600 feet. The attention of a large fraction of the area of the park was thus commanded.

The native power of human speech can interfere little with the self-protection of those who do not wish to listen. They may easily move beyond earshot, just as those who do not choose to read need not have their attention bludgeoned by undesired reading matter. And so utterances by speech or pen can neither be forbidden nor licensed, save in the familiar classes of exceptional situations. *Lovell* v. *Griffin*, 303 U. S. 444; *Hague* v. *CIO*, 307 U. S. 496; *Schneider* v. *Irvington*, 308 U. S. 147; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568. But modern devices for amplifying the range and volume of the voice, or its recording, afford easy, too easy, opportunities for aural aggression. If uncontrolled, the result is intrusion into cherished privacy. The refreshment of

[1] The last census gave the population of Lockport as 24,379.

mere silence, or meditation, or quiet conversation, may be disturbed or precluded by noise beyond one's personal control.

Municipalities have conscientiously sought to deal with the new problems to which sound equipment has given rise and have devised various methods of control to make city life endurable. See McIntyre and Rhyne, Radio and Municipal Regulations (National Institute of Municipal Law Officers, Report No. 62, 1940) pp. 28 *et seq.* Surely there is not a constitutional right to force unwilling people to listen. Cf. Otto, *Speech and Freedom of Speech,* in Freedom and Experience (Edited by Hook and Konvitz, 1947) 78, 83 *et seq.* And so I cannot agree that we must deny the right of a State to control these broadcasting devices so as to safeguard the rights of others not to be assailed by intrusive noise but to be free to put their freedom of mind and attention to uses of their own choice.

Coming to the facts of the immediate situation, I cannot say that it was beyond constitutional limits to refuse a license to the appellant for the time and place requested. The State was entitled to authorize the local authorities of Lockport to determine that the well-being of those of its inhabitants who sought quiet and other pleasures that a park affords, outweighed the appellant's right to force his message upon them. Nor did it exceed the bounds of reason for the chief of police to base his decision refusing a license upon the fact that the manner in which the license had been used in the past was destructive of the enjoyment of the park by those for whom it was maintained. That people complained about an annoyance would seem to be a pretty solid basis in experience for not sanctioning its continuance.

Very different considerations come into play when the free exercise of religion is subjected to a licensing system whereby a minor official determines whether a cause is

religious. This was the problem presented by *Cantwell* v. *Connecticut*, 310 U. S. 296, and of course we held that "Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth." 310 U. S. at 305. To determine whether a cause is, or is not, "religious" opens up too wide a field of personal judgment to be left to the mere discretion of an official. As to the allowable range of judgment regarding the scope of "religion," see Judge Augustus N. Hand in *United States* v. *Kauten*, 133 F. 2d 703, 708. The matter before us is of quite a different order. It is not unconstitutional for a State to vest in a public official the determination of what is in effect a nuisance merely because such authority may be outrageously misused by trying to stifle the expression of some undesired opinion under the meretricious cloak of a nuisance. Judicial remedies are available for such abuse of authority, and courts, including this Court, exist to enforce such remedies.

Even the power to limit the abuse of sound equipment may not be exercised with a partiality unrelated to the nuisance. But there is here no showing of either arbitrary action or discrimination. There is no basis for finding that noisemakers similar to appellant would have obtained a license for the time and place requested. Reference is found in the testimony to the use of loudspeakers for Lutheran services in a nearby ballfield. But the ballfield was outside the park in which appellant blared to his audience, and there is nothing in the record to show that the Lutherans could have used their amplifying equipment within the park, or that the appellant would have been denied permission to use such equipment in the ballfield. See *Lehon* v. *Atlanta*, 242 U. S. 53. State action cannot be found hypothetically uncon-

stitutional. *New York ex rel. Hatch* v. *Reardon*, 204 U. S. 152.

The men whose labors brought forth the Constitution of the United States had the street outside Independence Hall covered with earth so that their deliberations might not be disturbed by passing traffic. Our democracy presupposes the deliberative process as a condition of thought and of responsible choice by the electorate. To the Founding Fathers it would hardly seem a proof of progress in the development of our democracy that the blare of sound trucks must be treated as a necessary medium in the deliberative process. In any event, it would startle them to learn that the manner and extent of the control of the blare of the sound trucks by the States of the Union, when such control is not arbitrarily and discriminatorily exercised, must satisfy what this Court thinks is the desirable scope and manner of exercising such control.

We are dealing with new technological devices and with attempts to control them in order to gain their benefits while maintaining the precious freedom of privacy. These attempts, being experimental, are bound to be tentative, and the views I have expressed are directed towards the circumstances of the immediate case. Suffice it to say that the limitations by New York upon the exercise of appellant's rights of utterance did not in my view exceed the accommodation between the conflicting interests which the State was here entitled to make in view of time and place and circumstances. See *Cox* v. *New Hampshire*, 312 U. S. 569.

SUPREME COURT OF THE UNITED STATES

504.—October Term, 1947.

Samuel Saia, Appellant, *v.* The People of the State of New York.	Appeal From the Court of Appeals of the State of New York.

[June 7, 1948.]

Mr. Justice Jackson, dissenting.

I dissent from this decision, which seems to me neither judicious nor sound and to endanger the great right of free speech by making it ridiculous and obnoxious, more than the ordinance in question menaces free speech by regulating use of loud-speakers. Let us state some facts which the Court omits:

The City of Lockport, New York, owns and maintains a public park of some 28 acres dedicated by deed to "Park purposes exclusively." The scene of action in this case is an area therein set apart for the people's recreation. The City has provided it with tables, benches, and fireplaces for picnic parties, a playground and wading pool for children, and facilities for such games as horseshoe pitching, bowling and baseball.

The appellant, one of Jehovah's Witnesses, contends, and the Court holds, that without the permission required by city ordinance he may set up a sound truck so as to flood this area with amplified lectures on religious subjects. It must be remembered that he demands even more than the right to speak and hold a meeting in this area which is reserved for other and quite inconsistent purposes. He located his car, on which loud-speakers were mounted, either in the park itself, not open to vehicles, or in the street close by. The microphone for the speaker was located some little distance from the car and in the park, and electric wires were strung, in

one or more instances apparently across the sidewalk, from the one to the other. So that what the Court is holding, is that the Constitution of the United States forbids a city to require a permit for a private person to erect, in its streets, parks and public places, a temporary public address system, which certainly has potentialities of annoyance and even injury to park patrons if carelessly handled. It was for setting up this system of microphone, wires and sound truck without a permit, that this appellant was convicted—it was not for speaking.

It is astonishing news to me if the Constitution prohibits a municipality from policing, controlling or forbidding erection of such equipment by a private party in a public park. Certainly precautions against annoyance or injury from operation of such devices are not only appropriate, but I should think a duty of the city in supervising such public premises. And a very appropriate means to supervision is a permit which will inform the city's police officers of the time and place when such apparatus is to be installed in the park. I think it is a startling perversion of the Constitution to say that it wrests away from the states and their subdivisions all control of the public property so that they cannot regulate or prohibit the irresponsible introduction of contrivances of this sort into public places.

The Court, however, ignores the aspects of the matter that grow out of setting up the system of amplifying appliances, wires and microphones on public property, which distinguish it from the cases cited as authority. It treats the issue only as one of free speech. To my mind this is not a free speech issue.[1] Lockport has in

[1] More than fifty years ago this Court in *Davis* v. *Massachusetts*, 167 U. S. 43, affirmed a state court decision (162 Mass. 510) written by Mr. Justice Holmes and holding constitutional an ordinance providing that "no person shall, in or upon any of the public grounds,

no way denied or restricted the free use, even in its park, of all of the facilities for speech with which nature has endowed the appellant. It has not even interfered with his inviting an assemblage in a park space not set aside for that purpose.[2] But can it be that society

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make any public address . . . except in accordance with a permit from the mayor." Mr. Justice Holmes had pointed out that the attack on the ordinance's constitutionality "assumes that the ordinance is directed against free speech generally, . . . whereas in fact it is directed toward the modes in which Boston Common may be used." That case, directly in point here, and approving a regulation of the right of speech itself, certainly controls this one, which involves only regulation of the use of amplifying devices, and, as applied to this appellant, forbade only unauthorized use in a park dedicated exclusively to park purposes. Moreover, the *Davis* case approved the requirement that a permit be obtained from a city official before "any public address" could be made "in or upon any of the public grounds."

The *Davis* case was not overruled in the cases cited by the Court. And all of those cases were considered and distinguished in *Cox* v. *New Hampshire*, 312 U. S. 569, written by Mr. Chief Justice Hughes for a unanimous Court, and which approved regulation and licensing of parades and processions in public streets even for admittedly religious purposes.

The case of *Hague* v. *C. I. O.*, 307 U. S. 496, cannot properly be quoted in this connection, for no opinion therein was adhered to by a majority of the Court. The quotation in the Court's opinion today had the support of only two Justices, with a possible third. The failure of six or seven Justices to subscribe to those views would seem to fatally impair the standing of that quotation as an authority.

[2] Nothing in the ordinance interferes with freedom of religion, freedom of assembly or freedom of the press. Indeed, the effect of § 3 which the Court summarily strikes down as void on its face, is to authorize the Chief of Police to permit use of "radio devices, mechanical devices, or loud speakers" where the subject matter is "news and matters of public concern and athletic activities" even though "the sound therefrom is cast directly upon the streets and public places" and "the sounds coming therefrom can be heard to the annoyance or inconvenience of the travelers upon any street or public places or of persons in neighboring premises" which would, without § 3, be barred by § 2.

has no control of apparatus which, when put to unregulated proselyting, propaganda and commercial uses, can render life unbearable? It is intimated that the City can control the decibels; if so, why may it not prescribe zero decibels as appropriate to some places? It seems to me that society has the right to control, as to place, time and volume, the use of loud-speaking devices for any purpose, provided its regulations are not unduly arbitrary, capricious or discriminatory.

But the Court points out that propagation of his religion is the avowed and only purpose of appellant and holds that Lockport cannot stop the use of loud-speaker systems on its public property for that purpose. If it is to be treated as a case merely of religious teaching, I still could not agree with the decision. Only a few weeks ago we held that the Constitution prohibits a state or municipality from using tax-supported property "to aid religious groups to spread their faith." *McCollum* v. *Board of Education*, 333 U. S. —. Today we say it compels them to let it be used for that purpose. In the one case the public property was appropriated to school uses; today it is public property appropriated and equipped for recreational purposes. I think Lockport had the right to allocate its public property to those purposes and to keep out of it installations of devices which would flood the area with religious appeals obnoxious to many and thereby deprive the public of the enjoyment of the property for the purposes for which it was properly set aside. And I cannot see how we can read the Constitution one day to forbid and the next day to compel use of public tax-supported property to help a religious sect spread its faith.

There is not the slightest evidence of discrimination or prejudice against the appellant because of his religion or his ideas. This same appellant, not a resident of Lockport but of Buffalo, by the way, was granted a permit

by the Chief of Police and used this park for four successive Sundays during the same summer in question. What has been refused is his application for a second series of four more uses of the park. Lockport is in a climate which has only about three months of weather adaptable for park use. There are 256 recognized religious denominations in the United States and even if the Lockport populace supports only a few of these, it is apparent that Jehovah's Witnesses were granted more than their share of the Sunday time available on any fair allocation of it among denominations.

There is no evidence that any other denomination has ever been permitted to hold meetings or, for that matter, has ever sought to hold them in the recreation area. It appears that on one of the Sundays in question the Lutherans were using the ball park. This also appears to be public property. It is equipped with installed loud-speakers, a grandstand and bleachers, and surrounded by a fence six feet high. There is no indication that these facilities would not be granted to Jehovah's Witnesses on the same terms as to the Lutherans. It is evident, however, that Jehovah's Witnesses did not want an enclosed spot to which those who wanted to hear their message could resort. Appellant wanted to thrust their message upon people who were in the park for recreation, a type of conduct which invades other persons' privacy and, if it has no other control, may lead to riots and disorder.

The Court expresses great concern lest the loud-speakers of political candidates be controlled if Jehovah's Witnesses can be. That does not worry me. Even political candidates ought not to be allowed irresponsibly to set up sound equipment in all sorts of public places, and few of them would regard it as tactful campaigning to thrust themselves upon picnicking families who do not want to hear their message. I think the Court is over-

concerned about danger to political candidacies and I would deal with that problem when, and if, it arises.

But it is said the state or municipality may not delegate such authority to a Chief of Police. I am unable to see why a state or city may not judge for itself whether a Police Chief is the appropriate authority to control permits for setting up sound-amplifying apparatus. *Cox* v. *New Hampshire*, 312 U. S. 569. It also is suggested that the city fathers have not given sufficient guidance to his discretion. But I did not suppose our function was that of a council of revision. The issue before us is whether what has been done has deprived this appellant of a constitutional right. It is the law as applied that we review, not the abstract, academic questions which it might raise in some more doubtful case.

I disagree entirely with the idea that "Courts must balance the various community interests in passing on the constitutionality of local regulations of the character involved here." It is for the local communities to balance their own interests—that is politics—and what courts should keep out of. Our only function is to apply constitutional limitations.

I can only repeat the words of Mr. Justice Holmes, disregarded in his time and even less heeded now:

> "I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand, I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable. I cannot believe that the Amendment was intended to give us *carte blanche* to embody our economic or moral beliefs in its prohibitions." [3]

[3] *Baldwin* v. *Missouri*, 281 U. S. 586, 595.